THE RENT QUESTION

IN

BENGAL

BY

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THE RENT QUESTION IN BENGAL.

LANDLORDS AND TENANTS: THEIR RESPECTIVE RIGHTS PREVIOUS TO THE PERMANENT SETTLEMENT.

THE Hon'ble Kristo Das Pal told us, in his speech on the Bengal Tenancy Bill, that the effect of the proposed law would be to cause "a redistribution of property." While on the other hand, His Excellency the Viceroy said that "it would be much more true to say that this Bill was a Bill for the restoration than for the redistribution of property." If the general welfare of Society required it, Government would be justified in making a redistribution of property. As that, however, is not at present the object of Government, we propose to consider how far the Bill is a Bill rather for the redistribution than for the restoration of property.

Much has been said about the rights which the Zemindars enjoyed before the Permanent Settlement, and though this is one of those subjects on which much can be said on both sides, we hope to be able to bring forward such facts and arguments as will convince impartial critics, though they may not bring conviction home to the heart of interested parties.

"To ascertain the position of the Zemindars it is not," said their advocate, "necessary for me to go back to the ancient history of India—I mean to the days of the Hindu supremacy. It is enough for us to know that

when the Mahomedans took over this country they fully recognised 'the position. the status and rights of the proprietors of the soil.'" It is strange that such an able debater as Mr. Pal should have taken up the argument from the middle and not from the beginning. But even then he has left us in the dark as regards the "position, the status, and rights" of the Zemindars as they were recognised by the Mahomedans when they took over this country. He has simply given us an extract from Mr. Pattle, who was a member of the Board of Revenue, at the time the Permanent Settlemeut was concluded, and who observed "that the country brought under the decennial settlement was for the most part wholly unculvated" and that he was convinced that the continuance of the English in the country depended on the adoption of that measure, and that the stability of the East India Company could not otherwise have been maintained. The next quotation was from Mr. Francis who stated "that the inheritable quality of the lands is alone sufficient to prove that they are the property of the Zemindars and others, to whom they have descended by a long course of inheritance." Surely these quotations are not sufficient to prove the "position, the status and rights" which the Zemindars enjoyed *previous* to the Permanent Settlement. Is it that Mr. Pal has cited no ancient Hindu or Mahomedan authority because none is to be found on the subject? We cannot believe that this was the reason. For turning to the "Institutes of Menu" we find among the rules to be observed in the Government of a country, the following:

"Sages, who know former times consider this earth (Prithivi) as the wife of King Prithu; and thus they pronounce cultivated land to be the property of him, who cut away the wood, or who cleared and tilled it;

and the antelope of the first hunter who mortally wounded it" (Verse 44 Chapter X). Again, "as the leech, the suckling calf, and the bee, take their natural food by little and little, thus must a King draw from his dominions an annual revenue." "Of cattle, of gems, of gold and silver, added each year to the capital stock, a fiftieth part, may be taken by the King; *of grain, an eighth part, a sixth or a twelfth, according to the difference of the soil, and the labour necessary to cultivate it*" (Verses 129 and 130, Chapter VII). Nowhere in the Code is there any mention made of persons answering the present class of Zemindars, who occupy an intermediate position between the Sovereign ruler and the actual cultivator of the soil. It seems, however, that the Zemindars are the representatives of the lords of villages mentioned by Menu in the following verses:

"V. 113. For the sake of protecting his dominions, let the King perpetually observe the following rules; for, by protecting his dominions, he will increase his own happiness:

"114. Let him place, as the protectors of his realm, a company of guards, commanded by an approved officer, over two, three, five, or a hundred districts, according to their extent:

"115. Let him appoint a lord of one town with its district, a lord of ten towns, a lord of twenty, a lord of a hundred, and a lord of a thousand:

"116. Let the lord of one town certify of his own accord to the lord of ten towns any robberies, tumults, or other evils, which arise in his district, and which he cannot suppress; and the lord of ten, to the lord of twenty:

"117. Then let the lord of twenty towns notify them to the lord of a hundred; and let the lord of a hundred

transmit the information himself to the lord of a thousand townships:

"118. Such food, drink, wood and other articles, as by law should be given each day to the king by the inhabitants of the township, let the lord of one town receive as his perquisite:

"119. Let the lord of ten towns enjoy the produce of two plough-lands, or as much ground as can be tilled with two ploughs, each drawn by six bulls; the lord of twenty, that of ten plough lands; the lord of a hundred that of a village or small town; the lord of a thousand, that of a large town:

"120. The affairs of those townships, either jointly or separately transacted, let another minister of the King inspect; who should be well affected and by no means remiss" (Chap. vii).

It will appear from the above that the "lord of one town" received as his remuneration only "such food, drink, wood, and other articles as by law should be given each day to the King by the inhabitants of the township," *taken as a body*, or in other words, by the village community. There is nothing said of the "lord of one town" enjoying the produce of any land by way of remuneration. It is only the "lord of ten towns" and the lords above him who were allowed the produce of lands by way of remuneration. These lands were, however, quite different from the lands held by cultivators. "Immemorial custom" says Menu, in verse 108, Chap. I., "is transcendent law, approved in the sacred scripture, and in the codes of divine legislators"; and "immemorial custom" has, as we shall find hereafter, in this case survived to a very great extent the destructive work of ages. It is custom which, as Mr. Mill says, "is the most powerful protector of the weak against

the strong; their sole protector where there are no laws or Government adequate to the purpose" that has helped the Bengal ryot to outlive the exaction and tyranny that prevailed for ages since the time of Menu—"Traces of all the revenue divisions of Menu," says Mr. Elphinstone, "under lords of 10 towns, lords of 100 towns, and lords of 1000 towns, are still to be found, especially in the Deccan; but the only one which remains entire is that called Pergunnah, which answers to the lordship of 100 towns. Even the officers of the old system are still kept up in these divisions, and receive a remuneration in lands and fees; but they are no longer the active agents of the Government, and are only employed to keep the records of all matters connected with land. It is generally supposed that these officers fell into disuse after the Mahomedan conquest; but as, like every thing Hindu, they became hereditary, and liable to division among heirs, the sovereign, Hindu as well as Musulman, must have felt their inadequacy to fulfil the objects they were designed for, and the necessity of replacing them by officers of his own choosing, on whom "he could rely." In another place (appendix V. notes on the Revenue system,) the same author remarks: "Traces of the lord of a thousand villages are found in different parts of the country where particular families retain the name and part of the emoluments but seldom or never exercise any of the powers."

"The next division is still universally recognised throughout India under the name of *pergunnah*, although in many places the officers employed in it are only known by their enjoyment of hereditary lands or fees; or at most, by their being the depositories of all registers and records connected with land. . . . . The duties of a chief of a pergunnah even in pure Hindu

times, were probably confined to the management of the police and revenue."

It is hardly necessary to state that the above quotations from Elphinstone describing the present state of things, fully corroborate the statements of Menu as regards the manner in which "the lords of towns" were remunerated in ancient time. That these "townlords" never enjoyed like the modern "landlords" any portion of the rents payable by actual cultivators can admit of no dispute. They had their own ploughs with which they cultivated the land assigned to them for the service they rendered to the State. At a time when every man, however high his position might be, grew his own food, the "lord of towns" were but respectable farmers. We shall hereafter see that the remuneration given to the Zemindar of the Mahomedan period was also derived from the produce of what were called the NANKAR and KHAMAR lands.

We have seen that the *Zemindars* had no existence in the time of the Hindu Rajah—that the "lords of town" were simply officers of Government removable at pleasure and remunerated from the proceeds of service lands—and that they had no share in the rents collected by them from tho actual cultivators of the soil for the sovereign. We shall see that the same custom prevailed during tho time of the Mahomedans. It was not until the reign of Akbar that any attempt was made by the Mahomedans towards a regular settlement of land. The famous settlement of Todar Mal or Tooren Mul took place during this reign. "He collected the accounts of the canoongoes; and in some places ascertained their accuracy, by local enquiries, and by measuring the land. From these materials he compiled the TAKSEEM, or the account exhibiting the constituent portions of the rent of each village, district, and principality; and the aggregate

formed the TOOMAR, or rent roll, of the soobah." He regulated the sovereign's share of the gross produce "according to the situation of the land, and quality of the soil, by the labour and expense attending the cultivation of it, in different degrees of proportion; from one half, to an eighth of the estimated gross revenue. He left with the zemindars the management of their lands; and concluded settlement of the revenue with them, assigning to them a portion of the land, or its produce, for their immediate use and sustenance, under the denomination of NANKAR" . . . "The settlement of Bengal by Tooren Mul was completed about the year 1582; and appears to have subsisted, with little variation, for a period of about seventy-six years, until the year 1658, near the close of Sultan Sujah's Viceroyalty. During this interval, a very small proportion of the revenues of Bengal were remitted to Delhi. They were applied to the discharge of the public expenses of the province, for which they were fully adequate; and no general attempt appears to have been made to enhance the assessment of Tooren Mul, by new inquisitions into the produce of the lands. The addition imposed by Sultan Sujah, the result perhaps of such an enquiry partially undertaken, was moderate. Jaffer Khan, who was appointed Dewan of Bengal by Aurungzeb, and afterwards NAZIM by Furukseer, in 1713, prosecuted his enquiries into the finances of the country with a rigour before unknown. He deputed his own agents to scrutinize the value of the lands; and to raise the rents of them to the highest possible standard, by collecting for the Government all that the ryots, or peasantry, paid to the zemindars, to whom he left their established subsistence of NANKAR."—(Harington's Analysis, vol. III, pp. 233 to 236).

It will appear from the above extracts that the zemindars were but mere officers of Government remunerated for the service rendered by them to the State from the proceeds of the NANKAR &c., lands. That the zemindars were not regarded by the Mogul Government as "proprietors of the soil" is incontestably proved by a reference to the terms of the SUNNUD granted to them, which must be accepted as the basis of any rights and privileges which the zemindars may lay claim to. The following is a translation of a SUNNUD for a zemindary, granted in the time of Akbar Shah. "Be it known to the present and future mutsuddies, chowdries, canoongoes, talookdars, ryots and husbandmen of pergunnah——— belonging to chuklah——dependant on the soobah of Bengal; that the office of zemindar of pergunnah—— has been bestowed, from the commencement of the year —— on ——agreeably to the endorsed particulars, on condition of his paying——mohurs. It is required that, having performed with propriety the duties of his station, he deviate not from diligence and assiduity in the smallest degree; but observing a conciliatory conduct towards the ryots, and exerting himself to the utmost in punishing the refractory, and expelling them from his zemindary, let him pay his revenues in the treasury at the stated periods; let him encourage the ryots in such a manner, that signs of an increased cultivation, and improvement of the country, may daily appear; and let him keep the high roads in such repair, that travellers may pass and repass in perfect safety. Let there be no robberies, or murders, committed within his boundaries. Should any one, notwithstanding, be robbed or plundered of his property, let him produce the thieves, with the stolen property; and after restoring the latter to the rightful owner, let him assign the former over to

punishment. Should he fail in producing the parties offending, he must himself he responsible for the property stolen. Let him moreover be careful that no one offend against the peace of the inhabitants, by irregularities of any kind. Finally, let him transmit the accounts required of him to the *Huzzoor*, under his own and canoongoe's signature; and after having paid up his revenues completely to the end of the year, let him receive credit for the *Muzcoorat* agreeably to usage. Let him abstain from the collection of any of the *Abwabs*, that have been abolished or prohibited by Government. It is also required for the aforesaid mutsuddies, &c., that having acknowledged the said person zemindar of that pergunnah, they consider him as invested with the powers and duties appertaining to that station. Regarding this as obligatory, let them deviate not therefrom."—(Harington, vol. iii, pp. 252).

The MUCHULKA executed by the zemindar was a counterpart of the above *Sunnud*. But besides the MUCHULKA executed by himself, a zemindar was required to find a Hazir-zamin or surety for his appearance. The following is a form of the Hazir-zaminy executed in the time of Akbar.

"Whereas the office of zemindar of pergunnah——in sirkar——belonging to chuklah——dependant on the soobah of Bengal, has been given to——; I, having become security for his appearance, engage and bind myself, that in case the aforesaid person should abscond, I will produce him; and in the event of my not being able to do so, I will be responsible for his engagement. I have therefore written these few lines in the nature of a *hazir-zaminy* that they may be called for when necessary."—(Harington, vol. iii, pp. 254).

After a careful perusal of the above *Sunnud* and *Muchulka*, we cannot but agree with the following remarks made by the Committee of Revenue in their letter to the Governor-General-in-Council, dated 27th March 1786 :

"Having proceeded thus far" say the Committee, "gentlemen, in the explanation of the several points referred to us, it remains to answer the last enquiry of Your Honorable Board, on the nature of the zemindars' rights. A true knowledge of these is not, we humbly conceive, of very difficult attainment. Yet, the discussion has employed, for years past, the first talents, both in India and in Europe. A sober appeal to the facts will sometimes convince, when the most powerful eloquence shall have failed to persuade. In this hope it is that we now presume to call your attention to the instrument herein before mentioned (the sunnud), upon the tenor and terms of which all right and privilege of the zemindar most unquestionably depend. From this it is evident that the office is conditional; that it is renewable annually; and revocable on defalcation. It is evident that *though invested with the management of a certain proportion of the collections, yet is he expressly restrained from the alienation of any land; the enhancement of any rates or rents; and the imposition of any new taxes; these being rights inherent in and specially reserved to Government.* From the further inspection of a zemindary sunnud, it will appear that, *so far from any property being supposed, or understood, as conveyed to a zemindar, by this his intrument of law investiture, the lands he occupies in virtue of it are not even considered, or admitted, as a security for his personal appearance; since, together with the* MUCHULKA, a HAZIR-ZAMINY *is demanded and exacted from him.*"—(Harington, vol. iii, pp. 252 to 255).

It will be seen that the *Sunnud* allows the zemindar "to receive credit for the MUZCOORAT agreeably to usage." It might he asked what is this MUZCOORAT? Now the word *muzcoorat* as used in the SUNNUD meant the particulars of the remissions granted to each zemindar on account of his subsistence allowance, and collection charges. "The *dustoorat* of the zemindar, the *russoom* of the canoongoes, and the other zemindary charges, are" says Royroyan, "collectively denominated *muzcoorat.* This allowance was granted for the charges of collection; and the zemindars received credit for it in their *jumma waseel baki*, or account of demand, receipts and balance. It comprehends *nankar*, *ikhrajat*, *khyrat* and various other articles, without any specific limitation of their respective amounts. For a long time past the zemindars' DUSTOOR (including *nankar*) in Bengal has been between two and three per cent; the mokuddumy (charges of collection) five per cent; and the *russoom canoongoee* half per cent."—(Harington, vol. iii, pp. 344).

The following statement shows the account of the *muzcoorat* remissions granted to the zemindar of Rajshahye in the year 1131 B.S., or 1724 A.D., divided into distinct heads, elucidating the nature of the remissions.

I.—Amount applicable to the zemindars' private disbursements :

	Rs.	
Nankar	... 11,624	
Dustoor zemindary ...	... 22,600	
		34,224

II.—Amount considered as charges of collections :

Mokuddumy ...	... 13,484	
Pykan	... 2,274	
Dufterbund	... 4	

Mehmany	43	
		15,805
III.—Canoongoes:		
Neem Tuky		7,075
IV.—Charity:		
Ayma	3,048	
Enam	706	
Cuddum Russool	42	
Cheraggee	12	
Khyrat	6	
		3,814
Total *Muzcoorat* ...	Rs.	60,918

—(Harington, vol. iii, pp. 292).

The total jumma of Rajshahye for 1724, having been Rs. 16,45,395, the zemindar received for his private expenses and collection charges only 3 per cent of the gross revenue. It does not appear that the zemindars of other districts received more.—(Vide Harington, vol. iii, pp. 292 and 293).

We hope, we have successfully proved, that by virtue of their *sunnuds*, the Zemindars were but officers of Government, employed in the realization of revenue and preservation of peace. As, however, the subject is a most important one, we shall cite other authorities in support of our views.

Very elaborate inquiries regarding the rights of Zemindars preceded the conclusion of the Permanent Settlement. One of these inquiries was made by Mr. Grant, Sheristadar of Bengal. Mr. Grant maintains it to be a fundamental principle in all the native states of Asia, "*that the sovereign is sole universal proprietary lord of the land*; and that the ryots who are husband men or peasantry, hold directly of the prince, by immemorial

usage, as perpetual tenants *in capite*, subject to the annual payment of a certain fixed portion of the gross produce of the soil, in money or kind; to be collected through the intermediate agency of farmers general, or temporary commissioned officers of the crown;" As regards India we have found confirmation of the above in the extracts already made from Menu. During the times of the Mahomedans, these officers were called Zemindars. The office of the Zemindar which carried with it certain rights and privileges, was "held by temporary conditional grant" (vide *sunnud*). Mr. Grant denies "that the property of any lands in Bengal, excepting those held under the special grant of *altumgha*, and conditional *talookdary* and *ryotee* tenures, is or can be considered, according to the laws and established customs of the country, an inheritable property; or that it is otherwise vested in any class of Hindu subjects as *real property*, in the common English acceptation of the terms." "It belongs," he adds, "exclusively to the crown under the description of *khalsa*, or royal domains; and of *jagheer*, or feudal possessions; the latter bestowed for life, or officially, on the higher officers of State, military commanders, and *omrahs* of the court."

The Select Committee of the House of Commons on the affairs of the East India Company in the Appendix to their Fifth Report dated the 28th July 1812, observe as follows respecting the zemindary tenure in Bengal and Behar, as it existed when the Mogul Government was in its vigour:

"On a consideration of the information obtained, it appears, that although great disorders prevailed in the internal administration of the provinces, on the Company's accession to the Dewanee, a regular system of Government had subsisted, under the most intelligent

and powerful of the Mogul Gevernments, in which the rights and privileges of the different orders of the people were acknowledged and secured by institutions derived from the Hindoos; which, while faithfully and vigorously administered, seemed calculated to promote the prosperity of the natives, and to secure a due realization of the revenues of the State."

"The rule for fixing the Government share of the crop is traceable as a general principle, through every part of the Empire which has yet come under the British dominion; and undoubtedly had its origin in times anterior to the entry of the Mahomedans into India. By this rule the produce of the land, whether taken in kind or estimated in money, was understood to be shared, in distinct proportions between the cultivator and the Government."

"In Bengal, instead of a division of the crop, or of the estimated value of it in the current coin, as in Behar, the whole amount payable by the individual cultivator was consolidated into one sum, called the *asal*, or original rent, and provision made for the Zemindar, the village accountant, the mundul, and the other inferior officers, by other means than by a division of the zemindary portion of the produce. This was effected, either by grants of land; or by the privilege of cultivating on lower terms than the rest of the inhabitants; and partly in money."

"It is" says Mr. Harington, "by attempting to assimilate the complicated *system which we found* in this country with the *simple principles of landlord and tenant* in our own, and especially in applying to the Indian system terms of appropriate and familiar signification, which do not, without considerable limitation, properly belong to it, that much, if not all, of the per-

plexity ascribed to the subject has arisen. If by the terms *proprietor of land*, and *actual proprietor af the soil*, be meant a landholder possessing the full rights of an English landlord, or free-holder in fee simple, with equal liberty to dispose of all the lands forming part of his estate, as he may think most for his own advantage ; to oust his tenants, whether for life or for a term of years, on termination of their respective lease-holds ; and to advance their rents on the expiration of leases, at his discretion ; *such a designation, it may be admitted, is not strictly and correctly applicable to a Bengal Zemindar*, who does not possess so unlimited a power over the *khoodkasht* ryots, and other descriptions of under-tenants, possessing, as well as himself, certain rights and interest in the lands which constitute his Zemindary. But the estate of a Zemindar descends to his legal heirs by fixed rules of inheritance. It is also transferable by sale, gift, or bequest. And he is entitled to a certain share of the rent-produce of his estate, if it be taken out of his management ; or if he manage it, and engage for the public assessment, he receives whatever part of the rents may remain, after paying the assessment, and defraying the charges of management. It must, however, be allowed, that the peculiar tenure of a Zemindar, as it existed under the Mussulman Government of Bengal and the adjacent provinces, (especially with regard to the principal Zemindars, who held their Zemindaries, with certain services attached to them, under a sunnud of grant or confirmation) *partook more of the nature of an hereditary office, with certain rights and privileges attached to it, than of a proprietary estate in land.* * * * * The Zemindar appears to be a landholder of a peculiar description, not definable by any single term in our language. *A receiver of the*

territorial revenue of the State, from the ryots and other undertenants of land. Allowed to succeed to his Zemindary by inheritance; yet in general *required to take out a renewal of his title* from the sovereign, or his representative, on payment of a *peshkush*, or fine of investiture, to the Emperor, and a *nuzranah*, or present, to his provincial delegate, the Nazim. Permitted to transfer his Zemindary by sale, or gift; yet commonly *expected to obtain previous special permission.* Privileged to be generally *the annual contractor for the public revenue receivable from his Zemindary yet set aside with a limited provision, in land or money, whenever it was the pleasure of Government to collect the rents by separate agency; or to assign them, temporarily or permanently, by the grant of a jageer, or ultumgha.* Authorized, in Bengal, since the early part of the present century, (the 18th of the Christian Era) to apportion to the pergunnahs, villages and lesser divisions of land within his Zemindary, the *abwab*, or cesses, imposed by the Soobahdar, usually in some proportion to the standard assessment of the Zemindary, established by Torun Mul (Todar Mul) and others; *yet subject to the discretionary interference of public authority, either to equalize the amount assessed on particular divisions, or to abolish what appeared oppressive to the ryot.* Entitled to any contingent emoluments proceeding from his contract during the period of his agreement; *yet bound by the terms of his tenure to deliver in a faithful account of his receipts.* Responsible, by the same terms, for keeping the peace within his jurisdiction; *but apparently allowed to apprehend only and deliver to a Mussulman Magistrate for trial and punishment.* This is, in abstract, my present idea of a Zemindar under the Mogul constitution and practice."—(Harington's

Analysis Vol. III. pp., 399 to 401.) The italics are ours. The above definition of a Zemindar by Mr. Harington exhausts, we believe, all that can be said in his favour. He was simply an *office-bearer* with certain limited powers and was liable to be dispossessed of his Zemindary whenever he failed to render satisfaction to the Nabob.

During the Government of Moorshed Kuly Khan, commonly called Jaffer Khan, the Zemindars were all turned out of their Zemindaries. "For the purpose of making a fuller investigation of the capacity of the lands, he ordered the Zemindars into close confinement; and put the collections into the hands, of Bengali *aumils* (*i. e.*, superintendents), who executed *Tahuds* and *Muchulkas*. The revenues were paid immediately into the exchequer by these *aumils*; the Zemindars being deprived of all interference in the receipts and disbursements. . . . . He resumed all the extra expenses of the Zemindars; and gave them a *Nankar* barely sufficient for a subsistence." This state of things continued during the whole of Jaffer Khan's Government (1713 to 1726) and it was in 1726, that Shuja Uddeen Mohumed Khan "commenced his Government by taking compassion on the Zemindars, and setting them at liberty. After accepting from them a nuzzeranah, and upon their agreeing to an increase upon Jaffer Khan's settlement of the revenues, he gave them leave to return to their respective countries. The Zemindars, some of whom had been years in confinement, were glad to purchase their release at any price." (Extract from a narrative of the transactions in Bengal during the Soobahdaries of Azim-us-shan &c., translated by Mr. Francis Gladwin, and published in Calcutta 1781).

Having discussed the Zemindars' rights and privileges prior to the Permanent Settlement, we now propose

to examine those of the ryots. No question has so much occupied the attention of the public as that regarding the rights and status of the ryots previous to the Permanent Settlement. Yet none has been so unsatisfactorily dealt with as this. Even the best authorities have been led to form erroneous opinions from not being able to distinguish between what was lawful and what prevailed during the corrupt and weak Mahomedan government that immediately preceded the English. But in order to decide what the law on the subject was, one should refer to the Firmans or Edicts of the Emperors, wherever they are available. One of these Firmans issued in the beginning of Aurungzebe's reign, which, to our mind, is a most important document, is quoted below.

Translation of copy of a Firman issued by the Emperor Alumgeer to Mohummud Hosein, in the year 1079 Hijra (A.D. 1668-9) containing directions for the collection of the *kheraj*, or revenue; and the *oshur* or tithe:

"The Almighty Power having disposed our mind to rule the Empire according to the principles of justice, and the law of the Prophet, we have deemed it expedient to issue our royal edict *to all officers* entrusted with the management of affairs throughout *the regions of Hindoostan*, directing them to levy the revenue or *kheraj*, *in the mode and proportion enjoined by the holy law, and the tenets of Huneefah*, as laid down in the following articles":

"FIRST.—You will deport yourself towards the ryots with *kindness and humanity*; and by wise regulations, and practical expedients, encourage them to extend their cultivation, so that no land capable of being rendered productive may remain uncultivated. SECOND—At the commencement of the season, you will ascertain whether

the cultivators are employed in their cultivation, or appear inclined to neglect it. If they possess the means, you will induce them to cultivate their lands by encouragement; and to those who require assistance, you will afford it. If upon inspection you shall find, that though possessing the means, and blessed with a favourable season, the ryots neglect their cultivation, you will have recourse to threat and punishment. You will inform *the proprietors of land* (*Arbab-i-Zemin*) paying a fixed revenue (*Kheraj* (*Mowuzzuf*) that they will be obliged to pay the revenue, whether they cultivate the land or not. Should it appear that the cultivators are incapable of furnishing the means of cultivation, you will assist them with money, taking security for the same. THIRD—In lands paying a fixed revenue, if the proprietors are unable to furnish the means of cultivation, or shall have absconded leaving the land uncultivated, you will give it to another; either on lease; or for cultivation. In the former case, you will levy the revenue on the lease-holder; and in the latter, on the share of the proprietor giving the overplus to the proprietor. Or you will substitute a person in the place of the proprietor, who may cultivate the land, and after paying the revenue appropriate the overplus to his own use. When the proprietors of the land shall have acquired the means of cultivating it, you will cause it to to be restored to them. *If a person shall have absconded, leaving his land uncultivated, you will not give it in lease during that year, but in the next.* FOURTH—Where land continues to remain uncultivated, you will ascertain if it be a part of the high way; and in that case, you will consider it as an appendage of the towns and villages, in order to prevent its being tilled; should it not come under this description, and be incapable of

yielding a produce sufficient to indemnify the cultivator, you will exempt it from the payment of revenue; but should such land be capable of yielding a sufficient produce; or have been originally unproductive; in both cases you will enjoin the proprietor (if he be forthcoming, and possessed of sufficient means) to bring it into a state of cultivation. Should there be no proprietor to the land, or should he be unknown, you will give it to some person capable of rendering it productive. In such case, if the leaseholder be a Moosulman, and the land so given be *contiguous to lands paying the tithe you will rate it as Oshur, or tithe land; if to Revenue lands, or if the leaseholder be an infidel; you will assess it as kheraj, or revenue land.* Should it not be liable to the payment of *kheraj*, you will limit your present demand to *a certain sum on each beegha*, which is called *kheraj Mokutta*, or an adjusted revenue; or you will collect a certain portion of the actual produce, as an half; which is called *kheraj Mocasimah*, or rateable revenue. Should the proprietor be forthcoming, but destitute of the means of cultivation, and the land have been formerly subject to the fixed revenue, you will rate it as before directed. Should it not be liable to the fixed revenue, or should it be devoid of cultivation, you will neither demand the *kheraj*, nor the *oshur*; but, if necessary, assist the ryot with money, in order that he may bring the land into a state of cultivation. FIFTH—If there be a tract of forest land, the proprietor of which is forthcoming, you will confirm it to him, and not allow another to take possession. If the proprietor be not forthcoming, and there is no probability of the land yielding a return, you will give it to whosoever shall appear to you best calculated to restore it to its proper state of fertility: and *the person who shall render it most fruitful, you will consider as the*

praprietor of the land itself; nor shall he be liable to dispossession at any future period. But if the land yields some return, you will remove the obstacles which have prevented its being brought to account; and you will not suffer any one to reap the profits of that land, nor to take possession, or to become proprietor of it. If any tract of forest land shall have been formed into a village, and afterwards, from whatever accident, reverts to its former state of desolation, you will still continue it to the person who first received charge of it, nor suffer another to take possession. SIXTH—Lands not subject to the *oshur* or the *kheraj*, you will assess according to law. From revenue land you will *collect only so much as the ryots may be enabled to pay without being distressed*; *and on no account shall the amount exceed one half, though they may be capable of paying a greater portion.* Where the amount to be paid is fixed, you will continue to receive the fixed sum; unless it be revenue land and the amount so fixed exceed one half. But should the ryots have diminished the *ancient established revenue*, you will assess them according to their ability; and if the land be capable of paying more than the *mocurrerry* or fixed sum, you will rate it in proportion. SEVENTH—you may convert *the fixed revenue into the rateable revenue*, with the acquiescence of the ryots, but not without. EIGHTH—The period for levying the *fixed revenue is when each species af grain is ready for reaping.* When any crop of grain therefore is ready for cutting, you will collect such portion of the revenue as is equivalent to the produce. NINTH—Should *any inevitable calamity happen to the crops on land paying a fixed revenue* you will *ascertain the amount* of the *loss sustained, and grant an adequate deduction*; being careful to assess the proportion to be levied on the remainder of the produce, with

moderation, in order that the ryot may obtain a complete half. TENTH—In lands paying a fixed revenue, if any person possessing the means of cultivation, and unimpeded by any obstacles, shall leave his land uncultivated, you will collect the ACCUSTOMED REVENUE. In cases of inundation or scarcity of rain, or some unavoidable calamity befalling the crop before it is reaped, in so much that no part of the grain is saved, and the season is too far advanced to admit of the land being resown before the ensuing year, you will consider the revenue as no longer demandable. But should any calamity happen after the crop has been reaped, or even before which could have been averted, as the being eaten up by cattle, &c., or a time sufficient shall have remained for recultivating the land, you will collect the revenue. ELEVENTH—If the proprietor of land paying a fixed revenue after cultivating his land, dies without discharging the revenue, and *his heirs possess themselves of the produce*, they shall be answerable for the revenue. Should the proprietor die before his land is cultivated, and without realizing the amount of the revenue, you will collect nothing. TWELFTH—Where a fixed revenue is collected, if the proprietor gives his *land on lease* or *lends it to another*, and the lease-holder, or borrower, shall cultivate it, you will collect the fixed revenue from the proprietor. Should the leaseholder, or borrower, convert it into a garden, you will collect the revenue from the latter. Should any person have possessed himself of revenue land and afterwards deny the fact, if the proprietor has no witnesses, *and the usurper has cultivated it, you will collect the revenue from the latter.* If he has not cultivated the land, you will collect from neither of them. If the usurper shall deny the fact, and the proprietor shall prove it by witnesses, you will collect the revenue from the usurper. In cases of

mortgage, you will observe the same rules as are above laid down for usurpations; and if the mortgagee shall cultivate the land without the permission of the mortgagor, you will collect the revenue from the former. THIRTEENTH—Where fixed revenues are paid, if a person *sells any part of his land*, which is capable of cultivation, to another, and it produces one harvest, which has been reaped by the purchaser, the latter is entitled to cultivate what he may think proper during the remainder of the year, as the revenue will be collected from him. Should the purchaser not have reaped the harvest, the seller must pay the revenue. If the land so disposed of, produces two harvests, and the buyer shall have reaped one, and the seller the other, they shall pay an equal portion of the fixed revenue. If there shall be a crop on such land ready for cutting, you will collect the revenue from the seller. FOURTEENTH—In fixed revenue land, if any one shall appropriate his land for building a house, he shall continue to pay the former revenue levied from it; and in the same manner if he plant trees not bearing fruit. If he shall plant trees bearing fruit on land from which a fixed revenue is due, he shall pay a net revenue upon the whole, at the rate of two rupees and twelve annas, which is the produce of a garden, whether the trees bear their accustomed fruit or not. But grape, vines and almond trees shall pay according to the above rate when they bear fruit; and after producing fruit, they shall pay two rupees and twelve annas, provided the produce of one beegha (which in law is 60 square guz according to the measure of Shah Jehan) amounts to 5 rupees and 8 annas; otherwise you will collect one-half of the actual produce. If an unbeliever sells his land to a Moosulman you will oblige the purchaser to pay the *kheraj*, notwithstanding

his professing the Moosulman faith. FIFTEENTH—If any person shall convert his land into a *burial place or serai*, for the use of the public, you will consider the revenue as no longer due from it. SIXTEENTH.—*Should there be any revenue land*, the proprietor of which is not forthcoming *and another person should lay claim to the same in right of Mortgage*, or *purchase, the law entitles him to possession.* Whatever may be the produce of such land, you will collect the *established share.* If it exceed one half, you will reduce it; if it is less than a third, you will increase it in proportion. SEVENTEENTH.—If the *proprietor of rateable land dies without heirs* you will give it on lease or for cultivation as is directed in the case of land paying a fixed revenue. EIGHTEENTH.—In rateable land (*Mocasimah*) if any calamity befall the crop, you will not demand any revenue on account of what is destroyed. If after or before, reaping the crop, any calamity shall happen to it, you will collect the *kheraj* on such part only as remains (Harington's analysis Vol. III p.p. 300 to 306).

To understand what is meant by the words "proprietors of land," in the above extract, we would ask our readers to read the following extracts from Colonel Briggs's "Land Tax in India," pages 7 and 8, along with the Firman.

"In whatever point of view we examine the native government in the Deccan, the first and most important feature is the division into villages or townships. These communities contain in miniature all the materials of a State within themselves, and are sufficient to protect their members if all other governments were withdrawn.

"Each village has a portion of ground attached to it, which is committed to the management of the inhabitants. The boundaries are carefully marked and jealously guarded. They are divided into fields, the limits of

which are exactly known; each field has a name, and is kept distinct, even when the cultivation of it has been long abandoned. The result of the several reports received from Mr. Elphinstone is his conviction '*that a large portion of the ryots (cultivators) are the proprietors of their estates, subject to the payment of a Fixed Land Tax to Government, that their property is hereditary and saleable, and they are never dispossessed while they pay their tax; and even then they have for a long period (at least thirty years) the right of reclaiming their estate on paying the dues of Government.*'

"The Collector of Poonah states, 'the general divisions of husbandmen are two: *tulkaries*, men who cultivate their own fields; and *oopries*, or tenants who cultivate lands not their own. A third class exists, called *wawandkary*, a temporary tenant, who residing in one village, comes for a season to take land in another. The *tulkary* is a mirasdar. *Tul* signifies a field and *tulkary* the owner of land; *he is considered, and universally acknowledged by the Government, to have the property of the lands he cultivates.*"

"Again 'The Deccan landlord is proud of his situatoin, and is envied among his brethren, who are the cultivators of lands not their own; the feeling of attachment to their fields is remarkably keen, and no consideration but the utmost pecuniary distress will induce them to abandon their rights of proprietorship. These rights are either inherited or purchased; and it is a remarkable circumstance, that in the body of the deed of sale it is invariably recorded that he who sells his land has begged of him who buys to become the proprietor. It would seem that this insertion is deemed requisite as a safeguard to the buyer, in consequence of the well-known reluctance of all landlords to part

with their lands, and to show that no subterfuge was used to force or trick them from the original proprietor. The *tulkary* pays a land rent to Government according to the extent and quality of his lands. *This land rent is supposed to admit of no increase.* Such is this acknowledged right of the proprietor in most parts of the country.'"

We need hardly point out to the intelligent reader that the *Tulkary* of the Deccan, was in all respects the same as the *Arbab-i-Zemin* mentioned in the Firman of Alumgeer. We shall see that the *Khood-kasht* ryot of Bengal also occupied the same position.

In all the discussions which have of late taken place regarding the rights and privileges originally enjoyed by the *khood-kasht* ryot, the advocates on the sides of their zemindar and the ryot have cited, in support of their respective views, the opinions of the Judges and Statesmen of former times. But the old Regulations did not clearly define the word *khood-kasht*, which was "invariably coupled with the other terms, "*kadimi*," 'resident,' 'hereditary,' 'resident and hereditary.'" The consequence was that the learned Judges of the High Court in deciding the Great Rent Case, could not come to any agreement on the question as to what a *khoodkasht* ryot originally was. While some of them held "that the *khoodkasht* ryots were simply cultivators of the lands of their own village who, after being once admitted into the village, had a right of occupancy so long as they paid the customary rents; that they were opposed to the *pye-kasht* ryots: and that the two words '*khood-kasht*' and '*pye-kasht*' were used as correlative and as between them included all ryots", others were of opinion, "that a *khoodkasht* ryot was the cultivator of his own hereditary land; that to be a *khood-kasht* ryot at all implied that the ryot

must not only be a cultivator of lands belonging to the village in which he resided, but he must be an *hereditary husbandman*, that a *khood-kasht* right is not *acquired in a day but is transmitted.*"

So far as we are able to judge, this difference of opinion among the learned judges of the High Court, which is also visible in the discussions of the learned members of the Rent Commission, is attributable to the question not having been studied in the light of the Mahomedan Law bearing on the subject. We need hardly state that whatever position the *khood-kasht* ryots occupied during the Mahomedan Government, they continued also to occupy when that Government passed into the hands of the English. We have already placed before our readers the Firman of Emperor Aurungzib, we shall now lay before them quotations from the "Law and Constitution of India" based on the tenets of Huneefah referred to in the Firman.

(*a*). "'The land of the *Suwand* of Erauk is the property of its inhabitants (*ahl*). They may alienate it by sale, and dispose of it as they please; for when the Imaum conquers a country by force of arms, if he permit the inhabitants (*ahl*) to remain on it, imposing the *kheraj* on their lands and the *Jizeeah* on their heads, the land is the property of the inhabitants; and since it is their property, it is lawful for them to sell it, or to dispose of it as they choose.'"

(*b*). "The word in the above quotation translated 'property' is, in the original, '*milk*', which in law signifies indefeasible right of property; and the word rendered, 'inhabitants' is in the original '*ahl*', the import of which is simply that of dwelling, residing on the lands; as they say, *ahl-ool-busrah*, the inhabitants of Busrah."

(*c*). "From this we see that if the inhabitants of India

were suffered to remain on their lands on paying the above impost, the right of property in the Sovereign is gone at once; and if it was partitioned among the conquerors, the alienation is equally complete. The question at issue, therefore, is shortened by one claim, at least, of the three, viz, the *sovereign*, the *zemindar*, the *cultivator*. But in order to determine the other two claims, we must see what persons are meant by the *ahl*, who are thus vested with indefeasible right of property. . . . ."

(*d*). "It will appear that they are those who cultivate the land. They, the *cultivators* pay the *kheraj* and are termed *rubb-ool-arz*, (*i.e. Arbab-i-Zemin*) or masters of the soil."

(*e*) "The great Huneefeeah lawyer, Shums-ool-Aymah-oor-Shumhshee, in speaking of *kheraj*, on the question what is the *utmost* extent of *kheraj* which land can bear, says "Imaum Moohummud hath said regard shall be had to the cultivator, *to him who cultivates*. There shall be left *for every one who cultivates his land*, as much as he requires for *his own support* till the next crop be reaped, and *that of his family, and for seed*. This much shall be left him; what remains is *kheraj* and shall go to the public treasury..' Here there is no provision made for, no regard paid to, a *Zemindar* who contributes nothing to the produce of the soil." (pp. 32 to 34).

Further light is thrown on the subject by the following directions contained in the Huneefeeah law for the collection of the *kheraj*:

"The great Huneefeeah lawyer, Shums-ool-Aymah-oor-Shumhshee, adds; 'It is proper that the sovereign appoint an officer for the purpose of collecting the *kheraj* from the people in the most equitable manner. He shall collect the *kheraj* to the best of his judgment, in propor-

tion as the produce is reaped. When lands produce both a rubbeaa crop and a khureef crop, when the rubbeaa crop is gathered, he shall consider, according to the best of his judgment, how much the khureef crop is likely to produce, and if he think it will yield as much as the rubbeaa, he shall take half the *kheraj* from the produce of the rubbeaa, and postpone the other half to be taken from the produce of the khureef.' Here we see the minutest detail, and who are the parties ? the sovereign, or his servant, and the cultivator."

"The truth is, that between the sovereign and the *rubb-ool-arz* (i.e, arbab-i-zemin) who is properly the cultivator, or 'lord of the land,' no one intervenes who is not a servant of the sovereign ; and this servant receives his hire, not out of the produce of the lands over which he is placed, but from the public treasury, as is specially mentioned by every lawyer."

"And the ouly servant that intervenes between the sovereign and the cultivator is one collector. Thus : 'It is proper' says the learned *Shums-ool-Aymah* 'that the sovereign appoint collectors to collect the *kheraj* in the most equitable manner from the people.' These collectors were called *amil-een* (the plural of *amil*) ; and accordingly Akbar appointed a collector over every crore of dams, who was called *amilguzzar*, and the name is preserved to this day (1825) in the province of Oudh, and other parts of India beyond the Company's territories. 'And,' says Akbar, 'let the *amilguzzar* transact his business with each husbandman separately, and see that the revenues are demanded and received with affability and complacency'. And again, 'let him agree with the husbandman to bring his rents himself that there may be no plea for employing intermediate merceneries. When the husbandman brings his rent, let him have a receipt

for it signed by the treasurer' (Ayeen Akbaree.) Here the written Law says the people shall pay to the Government collectors, 'and the practice of India was such.' No *intermediate merceneries shall be suffered,* says Akbar to come between the sovereign and the cultivator" (Reproduced in "The Zemindary Settlement of Bengal Vol. I Appendix ii. pp. 35-36.)

We think the above clearly proves that according to the Mahomedan Law as it was administered in India, *the cultivator of the soil,* was recognised as the *proprietor* thereof, and that the settlement of Akbar suffered *no intermediate merceneries to come between the sovereign and the cultivator.* That this also continued to be the law and practice of later times is established beyond doubt by a reference to the Firman of the Emperor Alumgeer. As that Firman was addressed to "*all officers* entrusted with the management of affairs *throughout the religions of Hindustan,*" there can be no doubt that it applied to Bengal as well as to other Provinces of India.

Having seen that under the Mahomedan Government the *cultivators of the soil,* were the *proprietors* thereof, the next point to be considered is, whether all the cultivators belonged to the same class, or there were different classes of them. On this subject the following extract from Baillie's "Land Tax of India" describes the state of things prevailing in Bengal:

"In Bengal there are three different kinds of land, and three descriptions of ryots or cultivators. These are called *theeka, pyekasht* and *khoodkasht. Theeka* is a Hindustani word which signifies hire, or hireling, and *theeka* land is land cultivated by labourers hired for the occasion. *Pyekasht* is derived from, two Persian words, the first of which signifies "after" or "on account of,"

and the second is a contraction for *kashta*, sown. *Pye-kasht* land is land cultivated by ryots who have no permanent interest in it, but live in other villages than those to which the land belongs. *Khood-kasht* is similarly derived from the Persian word *khood*, self, and *kashta*, sown, and means literally *self, sown*, or sown for ones self." (Page xxix.)

It will appear from the above meanings of the words *theeka* and *pye-kasht* that the ryots who were known by those names were not cultivators of their own land—As, however, the present discussion refers only to the position of the *khoodkasht* ryot, it is unnecessary to discuss what the rights of the *theeka* and *pyekasht* ryots were. Whatever those rights may have been, they were inferior to those of the *khood-kasht* ryot. There was thus no *ryotee right* superior to the right of the *khood-kasht* ryot. Turning now to the Firman of Aulumgeer we find that the *cultivators of lands* were treated therein as *proprietors*. Who could these cultivators be? Whether the *theeka* and *pye-kasht* ryots were such cultivators or not, there can be no doubt that the *khood-kasht* ryots were—But it will be said that the Firman speaks of two different classes of ryots, namely those that paid *kheraj mowuzzuff* or fixed revenue, and those that paid *kheraj mokasima*, or rateable revenue—To which of these two classess did the *khood-kasht* ryot belong? The answer is very simple. There was, as we shall presently see, no difference in the positions of the ryots paying revenues under the two systems. This part of the discussion will therefore lead us into an examination of the terms—*kheraj mowuzzuff*, and *kheraj mokasimah*.

Referring to the "Law and Constitution of India" and also to Baillie's "Land Tax of India" we find: "The *kheraj* was fixed in two ways: One, on the principle

of a share in the produce, as a half, or a third, or a fifth. . . . This settlement was termed *Mokasimah*, from *kismut*, division, *i. e.*, the cultivator dividing the produce with the State. The other mode of fixing the *kheraj* (which was the radical mode, so that if the word *kheraj* simply is used, it is held to mean this mode of settlement) had reference to the quantity of cultivated land possessed, and the kind of crop produced. The rate of *kheraj* was fixed for the different kinds of crop the land was capable of producing. The revenue was fixed partly in kind and partly in money. This mode of settlement was called the *Makatuah* or *Wuzeefah* settlement. The quantity of the land is known by measurement; the rate is fixed; consequently the quantum of revenue is fixed—is *kheraj mowuzzuff*. By the former or *mokasimah* settlement, the quantity of revenue was not fixed, but depended on the harvest and on the cultivation. . . . The *kheraj mowuzzuff* was leviable whether the owner cultivated or not; provided he was not prevented from doing so by some inevitable calamity as inundation, blast, blight; or if he was deprived of his field by force, he was not liable." . . . "A *kheraj mowuzzuff* could not be changed into a *kheraj mokasimah*, nor a *kheraj mokasimah* into a *kheraj mowuzzuff* without the consent of the ryot." An illustration of all that has been stated above will be found in the Firman of Aulumgeer, to articles 12, 13 and 16 of which we would invite the reader's special attention. It will be seen that not only could lands paying *kheraj mowuzzuff* be transferred by lease, mortgage or sale but that *all revenue payiny lands could under the Mahomedan law be so transferred.* There was, therefore, no difference between the positions of the ryots who paid *kheraj mowuzzuff* and *kheraj mokasima*. The *sixteenth* article says "should

there be any revenue-land, the proprietor of which is not forthcoming, and another person should lay claim to the same in right of mortgage, or purchase, the law entitles him to possession." The reader need hardly be reminded that the *proprietor* here spoken of was the *cultivator of the land.*

We believe we have now satisfactorily established that under the Mahomedan Law, as it was administered in India, the ryot *i.e.*, the *cultivator of the soil* paying the *kheraj*, whether that was *kheraj mowuzzuff* or *kheraj mokasima*, was recognised as the actual proprietor thereof, and was "vested with indefeasible right of property." He could transfer his land by lease, mortgage, sale or gift. Who will after this deny that the *status* of the ryots of India under the Mogul Government was far better than what it is now under the English ?

Having seen what the rights of the ryots were under the law administered by the Mahomedans in India, we have next to consider whether the ryots still continued to enjoy those rights when the Government of the country passed into the hands of the English. Now, in the prosecution of this inquiry, we should bear in mind, that, as it always happens when a change of Government takes place, things were in a state of very great confusion at the commencement of the English rule in Bengal. A Company of Merchants came suddenly in possession of a vast territory for the Government of which they were but ill-prepared. As a necessary consequence, the powerful oppressed the weak for sometime even after the English rule was established. The rights of the poor ryots were encroached upon by the wealthy zemindars, the most powerful among whom had, by deserting Seraj-ud-doulah and going over to the English, laid the latter under some obligation. Again, in their

own country the English had no peasant-proprietors, but large landholders, and it is not to be wondered at, that there was at first an undue leaning on their part towards the zemindars.

Sir John Shore, who is an authority on revenue matters, speaking about the rights of the ryots says, that they were "very uncertain and indefinite." But before we accept his statement as correct, let us examine how far he had carefully weighed all the circumstances of the case. "It is" says he, "generally understood that the ryots by *long occupancy* acquire a right of possession in the soil, and are not subject to be removed; but this right does not authorize them to sell or mortgage it, and it is so far distinct from a right of property. This like all other rights, under a despotic or varying form of Government, is precarious. The zemindars, when an increase has been forced upon them, have exercised the right of demanding it from their ryots. If we admit the property of the soil to be solely vested in the zemindars, we must exclude any acknowledgment of such right in favour of the ryots, except where they may acquire it from the proprietor."—(Harington, vol. iii. p. 434).

It will be seen from the above, that Sir John Shore believed that the ryots could not have enjoyed a right of property in the soil cultivated by them under a despotic form of Government. But if the despotic Government of the Mogul prevented the ryots from enjoying a right of property, what evidence is there that the same Government did not prevent the zemindars from enjoying that right? If the "rights of the ryots were very uncertain and indefinite," what evidence is there that the rights of the zemindars were more certain and definite? His principal argument in support of the

theory that "*the rents belong to the sovereign and the land to the zemindar*" is derived from the construction he puts (vide Harington, vol. iii, pages 245 and 309), to the Firman of Aurungzib, quoted by us in a previous part of this discussion. (Vide p. 18). "The firman of the Emperor Aurungzib" says he "is decisive as to the subjects having a right of property in the soil" (p. 309). But if, as we have shown, this document proves the proprietary right of the *cultivators of the soil* and not *of the zemindars*, the whole theory of Sir John Shore regarding the proprietary right of the zemindar, on which the Court of Directors seem to have acted while ordering the Permanent Settlement, falls to the ground. None of the other documents, cited by Sir John Shore in his Minute, throws any light on the subject "of the proprietary right in the soil."

But let us see how far Sir John Shore is consistent in his statements. In the extract just quoted, he says "the ryots by *long occupancy* acquire a right of possession in the soil." According to this, *long occupancy*, is essential for the acquisition of a right of possession. Does the same inference follow from a perusal of the following:

"There are" says Sir John Shore in another place, "two other distinctions of importance also with respect to the rights of the ryots. Those who cultivate the lands of the village to which they belong either from length of occupancy *or other cause*, have a stronger right than others, and may in some measure be considered as hereditary tenants, and they generally pay the highest rents. The *other class* cultivate lands belonging to a village where they do not reside, *they* are considered tenants-at-will." (Reproduced at page 395 of the Report of the Rent Law Commission).

Two things are evident from the perusal of the above. First.—Sir John Shore had no correct knowledge of what gave a ryot the right of occupancy. He believed that *it might be length of occupancy*, or it might be something else—some *other cause*. *Prescription*, therefore, was not the *essential*, or the *only element* that constituted a right of occupancy. Secondly.—Sir John Shore found that it was an *indubitable fact* that there were two classes of ryots, namely, those that cultivated the lands of the village to which they belonged, and those that cultivated lands belonging to a village where they did not reside, and that while the latter class of ryots were considered *tenants-at-will*, the former were not. Now, without going to inquire into the *reason, why* the resident ryots enjoyed more rights than the non-resident, as that inquiry is not relevant to the present discussion, we should confine ourselves to the *fact* that there were *only two classes* of ryots, and that one of those two classes enjoyed more rights than the other. This is what Sir John Shore *found* to be the then existing state of things. We shall now see what Lord Cornwallis says on the subject:

"*Neither is the privilege which the ryots in many parts of Benyal enjoy, of holding possession of the spots of land which they cultivate so long as they pay the revenue assessed upon them*, by any means incompatible with the proprietary rights of the zemindars. Whoever cultivates the land, the zemindar can receive no more than the *established rent*, which, in most places, is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression, from which he could derive no benefit. The practice that prevailed under

the Mogul Government of uniting many districts into one zemindary, and thereby subjecting a large body of people to the control of one principal zemindar, rendered *some restriction* of this nature absolutely necessary."—(Harington, vol. ii, page 184).

According to Lord Cornwallis, therefore, the ryots in many parts of Bengal, whether *khoodkasht* or *pyekasht*, enjoyed the privilege of holding possession of the spots of land which they cultivated so long as they paid the revenue assessed upon them, and the zemindars were not entitled to demand more from a ryot than the established rent, *i. e.*, rent established by the authority of the Sovereign Power.

The same evidence as to the right of the ryots to hold the land cultivated by them on paying the *established rent* is to be found also in the following extract from the Despatch of the Court of Directors.

" Our interposition, where it is necessary, seems also to be clearly consistent with the *practice* of the *Mogul Government*; under which it appeared to be *a general maxim, that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied.* This necessarily supposes that there were some measures and limits by which the rent could be defined; and that it was *not left to the arbtirary determination of the zemindar*; for otherwise such a rule would be nugatory; and in point of fact the original amount seems to have been annually ascertained, and fixed by the act of the sovereign."—(Harington, vol. ii, p. 189).

We shall now lay before our readers, the following extract from the evidence of Mr. Holt Mackenzie, given before the Committee of the House of Commons in 1832. The questions and the answers are given at length.

"2569. Be good enough to begin with the lowest, and explain what you consider to be the actual rights of the cultivator and so upwards to the zemindar?—In some instances, ordinarily when cultivation and residence are in separate villages, the tenure of the persons occupying land (the parcels held by individuals of all classes of occupants are in India generally small) seems to be nearly analogous to that of farmers in this country, the cultivator holding generally from year to year, without any fixed right of occupancy. And even in the case of such persons, the rules by which the rent is adjusted are subject to considerable variations. Sometimes, the tenant pays a certain sum for a stated extent of land, varying sometimes according to the quality of the soil, sometimes according to the kind of the crop, and sometimes with reference to both, but still defined as so much per beegah. In other cases, he has to give a share of the produce or to pay a money compensation *in lieu* thereof. But these and other varieties which might be mentioned, although they determined the manner of adjusting the amount payable by the occupant, do not materially affect the nature of his right in the soil, which is that of a tenant holding after the expiration of the period for which he may have engaged, at the will of another.

"2570. Do you happen to know whether he is generally entitled to hold by the year?—I never heard of any thing under a year.

"2571. Have they a right similar to that which prevails in England, that they can only be called upon to quit their farm at a known period of the year?—It is generally understood that the interval between getting in of the last crop of one year and the ploughing for the next, is the time at which it is settled.

2572. Is there anything similar to notices to quit that prevail in England ?—I am not aware of any such form of notice being established. The class I now speak of usually reside in a different village from that to which the land belongs, and settle at the period of cultivation with the zemindar or his manager for the ensuing year. They have little or none of the local attachment which facilitates exaction from the fixed occupants, and though it may be expected to become every day more important to provide clearly for the rights of all classes, the necessity has as yet been little felt in the case of these non-resident cultivators. Generally, in regard to them it may be said, that the zemindar is as anxious to have the tenant, as the tenant is to have the land ; and the adoption of measures to secure them from injury is not so much required, as in the case of the resident cultivators who have fixed rights.

"2574. Is it customary for proprietors to cultivate their own estates, or are they usually let ?—Before answering that question, I should wish to explain what I mean by the word proprietor. The class I have now been describing may be considered to have no fixed right of occupancy, but the *more general tenure in Bengal is that of cultivators possessing a fixed right of occupancy in the fields cultivated by them, or at their charge and risk, whom I should call proprietors of the fields to which the right attaches.*

2575. Describe the nature of their right.—They may be generally described as *cultivators possessing a fixed hereditary right of occupancy in the fields cultivated by them,* or at their risk and charge, their tenure being independent of any known contract, originating probably in the mere act of settlement and tillage ; and the engagements between them and the Zemindar, or (in the

absence of a middleman) the Government officer, serving when any formal engagements are interchanged, *not to create the holding, but to define the amount to be paid on account of it. They cannot justly be ousted so long as they pay the amount or value demandable from them, that being determined according to local usage*; sometimes by fixed money rates or rates varying with the quality of the land or the nature of the crop grown; sometimes by the actual delivery of a fixed share of the grain produce; sometimes by an estimate and valuation of the same; sometimes by other rules; and what they so pay is in all cases distinctly regarded as the Government revenue or rent, whether assigned to an individual or not *in none depending on the mere will and pleasure of another.* There are varieties of right and obligation which one could fully explain only by a reference to individual cases, but this is my general conception of the rights of the class whom I should consider the *proprietors of the fields they occupy.* In Bengal Proper, they are usually called *khoodkasht* ryots (i. e., ryots cultivating their own), and by *this class of persons*, I believe the *greatest part of the lands in that province is occupied.*" (Reproduced at page 397 of the Report of the Rent Law Commission.)

In the opinion of the present editor of the *Hindu Patriot* and Secretary to the British Indian Association, the ryots can have no rights except what they derive from the Zemindars. But let us see what Baboo Hurrish Chunder Mookherjea, who held both the offices that the Hon'ble Baboo Kristo Das Pal now holds, said on the subject. He observed:—

"It has, we believe, not yet been denied that the interest of a khoodkasht tenant is transmissible by sale, gift, and succession, and that his right of occupancy does not terminate by any of those acts or omissions which

determine the rights of leaseholders generally. In certain points of view, a khoodkasht tenancy constitutes the highest title to real property known to the laws of this country; in every respect, the rights of a khoodkasht tenant are among the most valuable that form the subject matter of judicial inquiry." (Extracted at page 204. Appendix ix. Vol. I of "The Zemindary Settlement of Bengal," from a petition dated 27th September 1851, bearing among others, the signatures of Babus Shambhu Nath Pundit, Unnoda Proshad Bannerjea, Govind Pershad Bose, and Hurrish Chunder Mookherjea—all well known personages). The above opinion is the more valuable as in 1851 the relation between the landlord and the tenant was not of so strained a nature as it, at present, is.

RENTS IN OLDEN TIMES.

We have seen that of the three F's—fixity of tenure, fair rents, and free sale,—the ryot, in former times, enjoyed the first and the third. Let us now see how far he enjoyed the second. It is the fashion now-a-days to cry down all that was Mahomedan. The Mahomedans were, it is alleged, despotic and oppressive; they rack-rented the ryots and levied oppressive *abwabs* of various descriptions. But, before we join in this general cry, let us consider what the accounts we have of their revenue system, prove for or against them. In 1786, Mr. (afterwards Sir) J. Macpherson, Acting Governor-General, wrote as follows. "Nothing was more complete, more simple, correct and systematic than the ancient revenue system of this country. It was formed so as to protect the people who paid it from oppression, and secure to the sovereign his full and legal rights. The helplessness and the poverty of the native, combined with the force

of despotism to the establishment of such system. For, to draw the greatest regular revenue from millions of unarmed cultivators and manufacturers, a system was necessary, that connected the security of every ryot or peasant with the punctuality and equalization of the payments. A thousand checks became necessary, from the accountant and assessor of the village, through many gradations, to the accountant-general of the exchequer. Such was the nature of these checks, that if oppression had been committed, or a default of payment arose in any quarter, the error could be found out by investigation and re-examination of accounts, which were faithfully and regularly recorded in every district of the country, and from thence transferred, through different offices, to the final grand account of the year, in the khalsa or exchequer. This equal, regular, and just system, arose originally, perhaps, from the mild principles of the Gentoo religion, which the ruling, or the Brahmin power, found it necessary to accomodate, for the support of the indolent and idle castes, to the equal assessment of the cultivation of the soil and the industry of the manufacturer. When the ruling power devolved upon chiefs not of the Brahmin race, and afterwards on the Mahomedan conqueror, both found it necessary to continue the original system. We have reason to suppose that the Mahomedans improved it, by adopting some of the ancient Persian and Arabian revenue regulations. The revenue terms which occur in accounts are mostly of Persic or Arabic etymology; nor is the revenue system of those parts of India, where the Mahomedan conquests have not extended, found so perfect as that where their administration has long prevailed. Conquest must, at first, have disturbed the established regulations of every country. A short time would convince the invaders, that

justice and lenity towards the inhabitants could alone give value to the conquest. The tyrant and the conqueror might demand a greater revenue than the regular due of Government, and they might put the individuals, who were called upon to pay it, to the torture for more, and finally to death; but such acts would soon be found to have the same effect as killing the individual bees for their particular portions of honey. A revenue which many millions were to pay in small individual proportions, was only to be collected like the honey of the hive. The whole nation of the industrious was to be cherished and supported in their respective functions of industry, and at this day we find that the ryots and manufacturers of Bengal quit the field of the oppressor, and punish him by leaving his district a desolate waste. Such is the chief shield which these helpless people have to oppose against oppression; and it is more powerful than can, at first view, be imagined by an European. The ryot possesses other means of defence, and they are a disposition and great ability, in his little line, to defraud the collector of the revenue. Innumerable, I am told, are his acts and endeavours in this way: and here comes the first aid of the *regular ancient system of accounts.* The ryots will not venture to refuse to pay the *established due to the Sircar,* or Government. Custom is a law, whose obligation operates in their own defence, nor have they an idea of disputing it; they consider it as a species of decree from fate. But as the value of money, in proportion to its plenty, must have decreased in India as well as in Europe, so it has been found that the ryots of a village and of a whole district could pay a greater revenue than that originally settled by custom. Hence arose the oppressive catalogue of *abwabs,* or special additional assessments, by Government. The *abwabs,* or successive

additional taxes, make regular heads in the accounts of every village and district; nor are the *abwabs*, established openly by Government, of that oppressive nature which Mr. Francis in his ingenious minutes has supposed. The sources of real oppression are the secret *abwabs*, or unavowed taxes, which the great farmer or Zemindar imposes at will on the ryots, and of which we have such cruel examples in the investigation at Rungpore." ("Landholding, and the Relation of Landlord and Tenant." pp. 443 to 446).

The sources of real oppression were then the *secret abwabs*, or unavowed taxes imposed on the ryots by the Zemindar. We shall, hereafter, see that such *secret abwabs* are also levied by the Zemindar under the present Government. But let us hear what other authorities state about the Revenue system of the Mogul.

"It appears" say Messrs. Anderson Croft and Bogle, Commissioners appointed in 1777, "to have been an established maxim in this country, that the accounts of the rents of every portion of land, and other sources of revenue, should be open to the inspection of the officers of Government. It was chiefly by the intimate knowledge, and the summary means of information, which the Government thereby possessed, that the revenue was collected; and the Zemindars were restrained from oppressions and exactions. To the neglect of these ancient institutions, to the want of information in the Government of the State and the resources of the country, may perhaps be justly ascribed most of the evils and abuses which have crept into the revenue."

Sir John Shore gives the following account of the Revenue system of the Mogul Government.

"In order to preserve the valuation and register of Toorun Mul, the office of *canoongo* was appointed, and in

this office, all the records of public accounts were kept. Naibs, or deputies were stationed in different parts of the country, to mark the establishment of new villages, transfers of land, and other circumstances, which occasioned a change in the state of the country; and every sale or deed of transfer, the measurement, the boundaries and divisions of land, were registered by them with a minute exactness. These records were referred to, on every point that respected the finances or Civil Government; and in all disputes concerning lands. They contained an account of all customs and variations in them; and served frequently as a guide in imposing or collecting the revenue; and as a check on the embezzlements and exactions of the Zemindars and public officers. In the villages there were also officers for keeping the accounts of them, properly known by the name of *putwarries*, who were generally considered as hereditary; their accounts formed the basis of the canoongo's records; and in some places they are said to have been appointed by the *canoongoes*. At all events, whether they received their nominations from them or from the Zemindars, or from any public officer, I conceive them to be servants of the State, and responsible to it for their trusts. In the institutes of Akber, the several inferior officers for registering the accounts of the land and rents are recited under various denominations, some of which are no longer preserved; but the principle is there clearly established, and the correspondence of terms is immaterial. Of late years, and *more particularly since the establishment of the English authority the names and functions of the inferior officers have been confounded, and the whole system has fallen into insignificance or abuse.* The canoongoes have been as ready to take advantage of this as others; and hence the office has been by some

condemned as of no use, because little was derived from it. The conclusion is not warranted by the laws of reasoning" (Harington. Vol. III. p. 428.)

It was the establishment of the English authority which led to the destruction of the ancient revenue system of the country than which "nothing was more complete, more simple, correct and systematic"!!!

In the opinion of certain learned authorities, the ryots suffered under the Mogul Government from rack-renting and from exactions of various kinds. "When" says Dr. Field, "modern reformers talk with complacent benevolence on paper about restoring the *raiyats* of the present day to their ancient customary rights and the ancient land-law of their country, it is very desirable that we should understand, by the light of facts, the condition to which this plausible proposition would redeliver them, if it were literally carried into effect." Dr. Field here speaks of "*the light of facts*," and we shall, in the first place, lay before our readers the *facts* adduced by him.

"The principles of Mogul taxation, however limited in practice, were intended to give the sovereign a proportion of the advantages arising from extended cultivation and increased population. As the cultivated area of the country was extended, new land being brought under tillage in order to meet the enlarged demand for food created by an increase in the number of consumers, the *tumar* or standard assessment *i.e.*, the total of what Government received in money or in kind, was augmented. In order to carry out these principles, every extension and every diminution of cultivation was to be recorded; and inferior officers were stationed throughout the country to collect the necessary information, to note and register all matters relating to

the soil, its rents and produce. It is clear that any increase of revenue obtained in this way did not involve an increase of the demand made upon the cultivators, did not necessitate an enhancement of the rates payable by them; but it was very different with the *subhadari abwabs* or imposts. They were a direct raising of the assessment, and involved, *first*, directly, and *secondly*, indirectly, an enhancement of the rates paid by the *raiyats* or cultivators. These *abwabs* were levied upon the *tumar* or standard assessment in certain proportions to its amount. Thus, for example, the impost known as *sarf-i-sikka*, which was imposed to cover the loss on the exchange of coins of different mints, was nine rupees, six anas per cent, *i. e.*, upon the assessment as paid to Government by the farmer or *Zemindar*, who was supposed to levy the impost from the *raiyats* in the same proportion or according to the same percentage. It is clear, however, that the farmer or Zemindar, in order to pay the full percentage of increase to Government, must take something more from the cultivators in order to cover the expenses of collection. The element of uncertainty thus introduced was abused for the purpose of exaction; and the *raiyats* had to pay *directly* the increase which the Government required, and *indirectly* all that the farmer or Zemindar exacted under cover of the Government demand. Where the proportion or percentage was not defined, the levy of the impost was at the discretion of the Zemindars or farmers; and in many cases, though intended to have a partial operation merely, was extended to situations in which Government had no intention of claiming it. Even before the time of Jafier Khan, the Zemindars, farmers and officers of Government had been in the habit of levying imposts or

cesses upon the principle just explained for their own benefit. Jafier Khan merely adopted and utilized the device for his own benefit and that of the Government. Succeeding Nazims increased the *abwabs*, and thus at once forced the Zemindars and farmers to make fresh demands upon the *raiyats*, and gave them a pretext for exacting on their own accounts. During the decay of the Mogul Power, when the Governors of Provinces and Districts were practically independent, and thus able to practise oppression and extortion on their own account, and without restraint or check, the only limit to exaction was the ability of the cultivators to give what was demanded of them.

Speaking of the condition of things which was the result of these abuses, and which the English found existing in the country, Mr. Shore said :—'At present no uniformity whatever is observed in the demands upon the *raiyats*. The rates not only vary in the different collectorships, but in the pergunnahs composing them, in the villages and in the lands of the same village; and the total exacted far exceeds the rates of Toder Mull.' And again,—'We know also that the zemindars continually impose new cesses on their raiyats, and having subverted the fundamental rules of collection, measure their exactions by the abilities of the raiyats.' In a previous minute he had observed that 'the constitution of the Mogul Empire, despotic in its principle, arbitrary and irregular in its practice, renders it sometimes almost impossible to discriminate between power and principle, fact and right; and if custom be appealed to, precedents in violation of it are produced.'" (Landholding and the Relation of Landlord and Tenant, pp. 446-448).

Dr. Field quotes the opinions of the President and Council of Fort William and of Lord Cornwallis to

"show the misery and degradation of the people and the utter absence of law or order in the country." He considers the multiplication of opinions unnecessary upon this question, "as to the merits of which difference of opinion is scarcely possible." Now, though we do not deny that there was much lawlessness in the country when it passed into the hands of the English, we are not prepared to admit that as a rule the ryots suffered from exactions. We are no respecters of *mere opinions*, however high the authorities may be from whom they proceed. We require the *facts* on which the opinions are based. But nothing in the shape of *facts* has been given by Dr. Field. Referring to the orginal sources we find, that Sir John Shore has given an instance of the exaction he speaks of. "At present," he says, "there are many *abwabs* or cesses, collected distinct from the *nirikh* (rates), and not included in it; although they are levied in certain proportions to it. The following abstract of a ryot's account, taken nearly eight years before this time, will show the mode in which this is done :

	Rs. as. gs.
"Rent of seven beegahs, twelve cottahs, seven chattacks, of land, of *various produce, calculated at a certain rate per beegah, according to its produce*; (extracted from an account of demands and payments, called *Hissab khurcha*)	14 0 8

Abwabs or Cesses.

	Rs. as. gs.
Chouts, at 3-16ths per rupee ...	2 10 0
Poolbundy a half month's demand or 1-24th of the jumma ...	0 9 7
Nuzzerana, one month, or 1-12th ...	1 2 10
Maungun, one month, or 1-12th ...	1 2 10
Foujdary, ⅞ths of one month or 1-16th, ...	0 14 15
Company's Nuzzerana, one month and a quarter ...	1 7 0

Batta, one anna per rupee	...	0	14	0	8	12 2
	Total	...			22	12 10
Khelat, at one anna and a half per each rupee of the above sum	...	...			2	2 2
	Total	...			24	14 12

The first sum of Rs. 14 8gs., is called the original rate of the land; but even this *may* include cesses consolidated into it. Some of the *abwabs* or cesses, since added, are subsequent to the period of the dewanny" (Harington. Vol. iii, p. 435).

We are afraid our readers, startled by the above long list of abwabs, will refuse to hear any more our defence of the state of things formerly existing in this country. But we would entreat them to suspend judgment until they have heard us to the last. The above case when carefully examined will be found to be, after all, not so very bad as it at first sight appears to be. But there is an overwhelming mass of evidence to prove that in Bengal Proper generally the rents *including abwabs*, were *very much lower* than what Sir John Shore has given in the extract quoted by him.

We have said that the case cited by Sir John Shore was not so very bad as it at first sight appears to be. We shall try to explain what we mean. The standard *bigha* introduced at the settlement of Rajah Todar Mul, which continued to be in use during the first period of the English Government was different from the present standard bigha of 1600 Square yards. It was a square of sixty *tanab*. Sixty *guz* made one *tanab*; and forty-one fingers made one *guz*, or measuring yard. (Landholding, and the Relation of Landlord and Tenant p. 432). A *guz* or measuring yard of 41 fingers was quite different from a yard of 36 inches. It was larger by 4 or 5 inches.

A bigha of 60 square *tanab* was, therefore, greater than 3,600 square yards. It was equal to nearly $2\frac{1}{2}$ times the size of the present standard bigha. 7 bighas 12 cottahs 7 chattacks of the *Badshahi* bigha was, therefore, equal to nearly 19 of the present standard bighas. This will give the incidence per present standard bigha of the *asal* rent at $11\frac{3}{4}$ annas, and of the *asal* rent and *abwab*, taken together, at Re. 1-5 annas. This cannot be considered as having been very oppressive. It is true that, as a rule, prices have risen considerably since the Permanent Settlement. But while some of the crops have risen in value, others have fallen. Mulberry and cotton which once formed the most valuable crops in the western districts of Bengal and paid very high rents are now in a state of very great decline. As the rents quoted by Sir John Shore, were assessed on *various produce* calculated at a certain rate per bigha *according to its produce*, it may not be unlikely that mulberry and cotton were also the produce on which it was calculated. But leaving this out of consideration, let us see what increase there ought to be in the rents quoted by Sir John Shore owing to an increase in the value of rice. People generally have very exaggerated notions regarding the price at which rice sold in former days. And, though we are not in a position to produce statistics for all the districts of Bengal, we shall lay before our readers what information we have been able to collect on the subject from Dr. Hunter's Statistical Account of Bengal.

COMPARATIVE TABLE OF PRICES.

Name of District.	Ancient Price.		Modern Price.		Volume and page of Dr. Hunter's Book.
	Year.	Price of common rice per standard maund.	Year.	Price of common rice per standard maund.	
		Rs. As. P.		Rs. As. P.	
Birbhum ...	1788	1 0 9	1872	1 4 5	Vol. iv. p. 365
Dacca ...	1823	0 12 4			
	1838	0 10 0	1871	1 5 5	Vol. v. p. 94
Rungpur ...	1785-6	0 9 0	1872	1 8 7	Vol. vii. pp. 267 & 268
Murshedabad ...	1836-7	0 14 6	1870-71	1 10 0	Vol. ix. pp. 111 & 112
Patna ...	1814	0 10 8	1870-71	1 8 0	Vol. xi. pp. 121 & 122
	1790	0 9 0			
Saran ...	1791	1 5 0	1871-72	1 15 6	Vol. xi. p. 297
Gya ...	1814	0 10 8	1870	1 6 0	Vol. xii. p. 98
	1796	0 11 5			
Tirhut ...	1799	0 15 8	1868	1 6 9	Vol. xiii pp. 108 & 109
Purniah ...	1794	0 8 0	1872	0 12 0	Vol. xv. pp. 312 & 313

To the above is to be added the information derived by us from a study of the records of the Dacca Collectorate. In a letter dated 18th April 1782, the Supervisor of Dacca reported to Mr. Warren Hastings, Governor General, that the price of rice was two maunds per rupee in his district, which then included Backergunge. In another place we find that rice sold for Rs. 127 per 100 maunds of 97 sicca weight on 25th *Aughon* and for Rs. 140 per 100 maunds of the same weight on 20th

Magh in the Backergunge district from 1st December 1791 to 31st January 1792. This gives the price per standard maund at 15 annas and Rs. 1-1a. respectively.

Now, though the information we have laid before our readers is not of an exhaustive nature for making an accurate comparison between the *Present* and the *Past*, it is we believe sufficiently varied for arriving at an approximate result. We find that, as a rule the price of rice has *doubled* since the Permanent Settlement, that in some cases it has risen a little more, but that in no case has it gone up as *high* as *three times*. Such being the case the rent that, including *abwabs*, amounted to Re. 1-5 annas at the Permanent Settlement, would now be liable to be enhanced to Rs. 2-10 annas in consequence of a rise in the price of rice. But before we grant the Zemindar the full benefit of the increase in price, we ought to take into consideration the increase that has taken place in the population of Bengal under the peace and security enjoyed under the English rule, which has caused diminution in the size of a ryot's holding and has thereby lessened his power to bear increased rents. But even supposing that the Zemindar was entitled to the full benefit of the increase, Rs. 2-10 annas, would not be a very exorbitant rate compared with what the Government now proposes to give in the shape of 1-5th of the value of the gross produce. The rent quoted by Sir John Shore was not, therefore, of an oppressive character.

We have said that there is an overwhelming mass of evidence to prove that in olden times rents were generally very low. Those who speak of the exactions made in the shape of *abwabs* in former days, should bear in mind that at the Permanent Settlement, Government

did not give up any of those *abwabs*. The fact is that the *asal* rent of the Settlement of Todar Mal, increased by the subsequent imposition of *abwabs* and by assessment on lands subsequently brought under cultivation, was the basis of the Settlement of Lord Cornwallis. At Todar Mal's Settlement of 1582, the revenue assessed for the subah of Bengal was Rs. 1,06,93,152. In 1658 Shujah Khan raised the revenue to Rs. 1,31,15,907. Subsequently Jaffer Khan, called also Murshed Kuli Khan, increased it to Rs. 1,42,38,186. He imposed the first of the *subahdari abwabs* called *khas-navisi*. On his death in 1725, his son-in-law Sujabuddin succeeded to the Government of Bengal. Four additional *subahdari abwabs* were imposed by Sujab-ud-din, who raised the revenue to Rs. 1,42,45,561. Aliverdi Khan, who, in 1740, succeeded Sujah-ud-din, imposed three more *abwabs*, one of which was the Mabratta Chauth. "The highest assessment before the time of British rule was made by Kasim Ali, who in 1763, raised the revenue to Rs. 2,56,24,223." (Dr. Field's Landholding, and the Relation of Landlord and Tenant p. 442). The assessment of 1790-91 amounted to Rs. 2,68,00,989, exceeding Kasim Ali's assessment by Rs. 11,76,766, and "this assessment was, with no doubt some slight variation, declared to be permanent in A. D. 1793." (Memorandum on the Revenue Administration of the Lower Provinces, p. 7). Again, under section 54 of Regulation VIII of 1793 Zemindars were authorized "to revise the *abwabs* in concert with the ryots and consolidate the whole with the *asal* into one specific sum."

Under the circumstances stated above, there can be no doubt, that all the *abwabs*, known as *subahdari abwabs* form part of the present revenue and consequently of the rents paid by ryots. We have laid before our readers

what information we could collect regarding the price of rice in olden times. If, now, we can furnish them with the proportions of the gross produce that the present rents represent in the different districts of Bengal, they will be able to form some idea regarding the state of things existing in former days, less vague and unsatisfactory than what even great authorities on the "Rent question" seem to have formed. But, in order to throw additional light on the subject, ancient rates of rents will be given in all cases in which they are available. Our authority will be Dr. Hunter's Statistical Account of Bengal, and though the information contained therein regarding the "out-turn of crops," was not the result of detailed inquiry, it might be accepted as sufficiently correct for our present purposes. The approximation in agreement between the results of adjoining districts similarly circumstanced, goes very much in favour of the general accuracy of the information supplied by the Collectors of districts. We give below what information we have collected regarding the old and new rents and value of produce per bigha of rice-lands for each of the districts of Bengal Proper.

24 PARGANAHS. (Statistical Account Vol. I.)

The rates of rent in this district seem to have varied at the time of the Permanent Settlement in 1793 from 8 annas to Rs. 2 a bigha for rice lands (p. 157). The present rates for rice lands vary from Re. 1 to Rs. 4 (p. 156). Value of produce per bigha for land paying rent Re. 1-8 annas, = Rs. 12 (p. 148). Ratio of Rent to Produce = $\frac{1}{8}$.

NADIYA. (S. A. Vol II.)

There exist in the Collectorate of Nadiya lists of rates filed by zemindars about the time of the Permanent Settlement, between 1786 and 1795, from which the

following figures for rice lands for a standard bigha are taken (pp. 77 to 81.)

			Rs.	As.
(1.) Alampur: ...	aus or two crop lands	...	0	6½
	aman land	...	0	6½
(2.) Ashrafabad. ...	aus	...	0	9¼
	aman	...	0	7
(3.) Bagmara ...	aus	...	0	6½
	aman	...	0	6½
(4.) Bagwan ...	aus	...	0	8¼
	aman	...	0	9¾
(5.) Faizullapur ...	aus	...	0	10
	aman	...	0	5
(6.) Havilishahr ...	aus	...	0	9¾
	aman	...	0	9¾
(7.) Jaipur ...	aus	...	0	6½
	aman	...	0	6½
(8.) Karigachhi ...	aus	...	0	9¾
	aman	...	0	7¼
(9.) Khosalpur ...	aus	...	0	4
	aman	...	0	5
(10.) Kusdaha ...	aus	...	0	8¼
	aman	...	0	6
(11.) Krishnagar ...	aus	...	0	9¾
	aman	...	0	8¼
(12.) Kubazpur ...	aus	...	0	8¼
	aman	...	0	4¼
(13.) Mahatpur ...	aus	...	0	9¾
	aman	...	0	7¼
(14.) Mahammed Alipur ...	aus	...	0	9
	aman	...	0	9
(15.) Mamjuani ...	aus	...	0	9¾
	aman	...	0	9¼

(16.) Matiari ...	aus	...	0 6½
	aman	...	0 5
(17.) Mulgarh ...	aus	...	0 6½
	aman	...	0 6½
(18.) Munshiganj...	aus	...	0 8¼
	aman	...	0 6½
(19.) Nadiya or Nabadwip	aus	...	0 9¾
	aman	...	0 13
(20.) Pajnaur ...	aus	...	0 9¾
	aman	...	0 7¼
(21.) Patmahal ...	aus	...	0 14
	aman	...	0 8
(22.) Palasi (Plassey)	aus	...	0 11½
(23.) Rajpur ...	aus	...	0 10
	aman	...	0 5
(24.) Santipur ...	aus	...	0 9¾
	aman	...	0 7¼
(25.) Srinagar ...	aus	...	0 9¾
	aman	...	0 8¼
(26.) Ukra ...	aus	...	0 9¾
	aman	...	0 7¼

It will appear from the above that, as a rule, the rates for the *aus* land varied from 6 anas to 10 anas, and of aman land from 5 annas to 8 annas a bigha. In two cases, the rate was as low as 4 annas, and in one case only as high as 14 annas. "There are some old *jama* or long lease lands where the rent is so low as from 1½ to 2 annas per bigha; but such low rates have now become very uncommon" (p. 74). As regards present rates we find. "*mathan* or arable land, is assessed at from 6 anas to Re. 1-4 anas per bigha, according to quality. In the Ranaghat and Kushtia sub-divisions, however, the rate for exceptionally fine arable land rises as high as Rs. 2-8

annas a bigha. These lands are chiefly used for the *aus* and *aman* rice crops" (p. 74).

The value of the average yield per bigha of the best land producing two crops in the year is estimated at Rs. 10. (p. 69). Taking the average rent per bigha of such land to be Re. 1, the ratio of rent to produce will be 1 : 10.

JESSORE. (S. A. Vol. II.)

No information available regarding old rates. Present rates vary from 14 annas to Re. 1-8 annas (p. 247). Value of produce Rs. 12 for a bigha of land paying rent Re. 1-8 annas. Ratio of rent to produce=$\frac{1}{8}$.

MIDNAPUR. (S. A. Vol III.)

No information about old rates. Present rates vary from 0—6¼ anas to Rs. 2 (p. 107). Value of produce per bigha paying Re. 1-8 annas rent=Rs. 12-8 annas (p. 82) Ratio of rent to produce=$\frac{1}{8}$.

HUGHLI. (S. A. Vol. III.)

There exist sufficient data for comparing the ancient and modern rates of rents in this district, as will appear from the following extract from Dr. Hunter. "The agricultural lands are divided into two grand classes,—*sona* and *sali*. *Aus* paddy, potatoes, pulses, oilseeds, and sugar-cane are cultivated on *sona* lands, which produce two crops in the year,—an autumn crop of *aus* rice, and a winter crop of pulses or oilseeds. *Aman* paddy, *boro* paddy, and jute are the crops principally cultivated on *sali* land. Both descriptions of land are subdivided into four classes, with reference to their qualities and the rates of rent they command. These subdivisions with their present rates of rent as compared with those ruling twenty years ago, and at the time of the Permanent Settlement are returned by the Collector as follows:—(1) *sona awal*, or first-class two

crops land, present rate of rent from Rs. 4 to Rs. 6 per bigha; ordinary rent twenty years ago, Rs. 2-8 annas a bigha; rent at or about the time of the Permanent Settlement at the close of the last century, Re 1 a bigha (2) *Sona doem,* or second class land, present rent Rs. 3 a bigha; rent twenty years ago Rs. 2 a bigha; rent about the time of the Permanent Settlement, 12 annas a bigha. (3) *Sona siyam* or third class land, present rent Rs. 2 4 annas a bigha; rent twenty years ago, Re. 1-8 annas a bigha; rent about the time of the Permanent Settlement, 8 annas a bigha; *sona chaharam,* or fourth class land, present rent Re 1-12 annas a bigha; rent twenty years ago Re 1 a bigha; rent about the time of the Permanent Settlement 6 annas a bigha. (5) *Sali awal,* or first class *sali* land cultivated with *aman* or *boro* rice or jute, present rate of rent Rs. 4 a bigha; rent twenty years ago Rs. 2-8 annas a bigha; rent about the time of the Permanent Settlement Re. 1 a bigha. (6) *Sali doem,* present rent Rs. 3 a bigha; rent twenty years ago, Rs. 2 a bigha; rent about the time of the Permanent Settlement 12 annas a bigha. (7) *Sali siyam,* present rent Rs. 2 a bigha; rent twenty years ago Re 1-8 annas a bigha: rent about the time of the Permanent Settlement 8 annas a bigha. (8) *sali chaharam,* present rent Re. 1-8 annas a bigha; rent twenty years ago, Re. 1 a bigha; rent about the time of the Permanent Settlement 6 annas a bigha (p. 354.)

It will appear from the above that rents in Hughli have risen four-fold since the time of the Permanent Settlement. Whether this enormous increase is justifiable on the ground of a corresponding increase in the value of the produce we leave it to the reader to decide.

BURDWAN. (S. A. Vol. IV.)

No means exist for ascertaining the rates of rent for

the different varieties of land prevailing in Burdwan about the time of the Permanent Settlement. The present rate of rent for *sona* land, excluding unusually high or unusually low rates, varies from Re. 1-8 annas a bigha for fourth-class to Rs. 6 per bigha for first class land; the rate of rent paid for *sali* lands varies from 12 annas a bigha for fourth class, to Rs 3 a bigha for first-class land —(p. 86). It will be seen that the present rates of rent in Burdwan assimilate with those current for similar descriptions of land in the adjoining district of Hughli, and as a general enhancement of rents has also taken place in this district, it is not unlikely that in olden times rents were as low in Burdwan as they are found to have been in Hughli.

BANKURA. (S. A. Vol. IV.)

The rents in this district appear to have varied from 12 annas to Rs 3-4 annas a bigha for rice lands about the time of the Permanent Settlement (p. 265). No marked change has taken place in rates since that settlement, but the landlords have increased their rents by transferring lands from a lower to a higher class (p. 266). The value of produce per bigha of best rice land paying rent Rs. 2-6 annas is about Rs. 7-8 annas, so that the ratio of rent to produce is represented by the fraction $\frac{1}{3}$ (p. 248).

BIRBHUM. (S. A. Vol. IV.)

The rents in Birbhum vary from Rs. 1-4 annas to Rs. 3. The rates of rent about the time of the Permanent Settlement are said to be the same as those ruling at the present day (p. 371) The value of produce for land paying rent Rs 3 is about Rs. 10 per bigha. The ratio of rent to produce = $\frac{1}{3}$. (p. 353)

As might be expected things are similar in Bankura and Birbhum which in fact form one district. Unlike the other districts of Bengal, the rates of rents were com-

paratively high in these districts at the time of the Permanent Settlement. But they could not have pressed very heavily on the ryots who cultivated also mulberry, cotton and sugarcane all which were very much more paying before than they are at present.

DACCA, (S. A. Vol. V.)

No records exist in the collectorate showing the old rates of rent, (p. 101). But in an estate of which we have personal knowledge, the rate of rent per *pakhi* (=1 bigha 1 cottah) was 4 annas in olden times. It was subsequently raised to 6 annas and is now 9 annas. The present rates of rent in Dacca vary from 6 annas to Re. 1 (p. 101), the average rate being about 12 annas. The value of produce for a bigha of land paying 12 annas is Rs. 12 (p. 92). Ratio of rent to produce=1 : 16 nearly.

BAKARGANJ, (S. A. Vol. V.)

No information regarding old rates or value of produce. Present rates vary from 8 annas to Rs. 2 (p. 210).

FARIDPUR, (S. A. Vol. V.)

No information regarding old rates. Present rates vary from 4 annas to Re. 1, average 10 annas a bigha (p. 326). Value of produce Rs. 10 (p. 315). Ratio of rent to produce=1 : 16.

MYMENSING, (S. A. Vol. V.)

No information about old rents. Present rates vary from 4 annas to Re. 1-8 annas (p. 454). Value of produce Rs. 9 for land paying, Re. 1-8 annas a bigha. Ratio $\frac{1}{6}$ (p. 443.)

CHITTAGONG, (S. A. Vol. VI.)

No information about rates in olden times. Rents have increased very much during the past 25 years (p. 179). During the settlement of 1835-48 of the *tarafs* the rate appears to have been not more than

12 annas a bigha (p. 168). The present rates vary from Rs. 2 to Rs. 7 a bigha (p. 180). The average rent for good land is about Rs. 3-12 annas per bigha and for poor soil, about Rs. 2 per bigha, (p. 179).

NOAKHOLI, (S. A. Vol. VI.)

No records exist regarding rates prevailing about the time of the Permanent Settlement. The rates in *pargana* Bhulua 30 years ago were from 12½ annas to Re. 1-8 annas a bigha. They now vary from Re. 1 to Rs. 1-14 a bigha. In *pargana* Amrabad, about 30 years back rents were 10 annas a bigha; they now vary from 10 annas to Rs. 1-10, (p. 314). The present rates for rice land vary from Re. 1-5¾ annas to Rs. 1-14½ annas in the mainland and from 7 annas to Rs. 1 in churs, value of produce Rs. 11-2 annas for land paying Rs. 1-8 annas (295) Ratio ⅛.

TIPPERAH, (S. A. Vol. VI.)

No information regarding old rates. But the average rate of land which before the passing of Act X of 1859 was 12 annas a bigha, has risen of late to Rs. 1-8 annas the present rates vary from 8 annas to Rs. 2-8 annas a bigha (p. 413). Value of produce for land paying rent Rs. 1-8 anaas a bigha Rs. 11. Ratio 1 : 7 (p. 394).

MALDAH, (S. A. Vol. VII.)

The average rate for ordinary rice land prevailing in 1842 was 3 annas per bigha. (p. 89). Present rates vary from 6 annas to Rs. 1-8 annas, (p. 186). Value of produce for land paying Rs. 1-4 annas a bigha Rs. 15 (p. 74) Ratio 1 : 12.

RANGPUR, (S. A. Vol. VII.)

No information available about old rents. Present rates vary from 12 annas to Rs. 1-8 a bigha. (p. 284). Value of produce Rs. 10 for land paying Rs. 1-8 annas (p. 260). Ratio ⅛ nearly.

DINAJPUR, (S. A. Vol. VII.)

The rates of rents in this district are almost the same as those prevailing in Rangpur and the ratio of rent to produce also the same, namely $\frac{1}{8}$.

RAJSHAHI, (S. A. Vol. VIII.)

In 1790, the rates current for ordinary land appear to have been $2\frac{1}{2}$ annas per bigha. (p. 78). The present rates vary from 12 annas to Rs. 1-8 annas (p. 74). Value of produce Rs. 10 for land paying rent Re. 1-8 annas. Ratio 1 : 7.

BOGRA, (S. A. Vol. VIII.)

The present rates of rents for rice land vary from 4 annas to Rs. 2 a bigha (p. 245). In 1828, the best rice-land paid one-half the present rent. (p. 247).

MURSHIDABAD, (S. A. Vol. IX.)

In 1821 the rates for rice lands varied from 7 annas to Rs. 1-14 annas (p. 126). Present rates vary from 8 annas to Rs. 4. (p. 125). Value of produce Rs. 12-8 annas for land paying Rs. 3. Ratio $\frac{1}{4}$ (p. 106).

PABNA, (S. A. Vol IX.)

No information regarding old rents. Present rents vary from 8 annas to Rs. 1-8 annas, (p. 317). Value Rs. 12-8 annas for land paying Rs. 1-8 annas (305), Ratio $\frac{1}{8}$.

The information we have given above regarding the rates of rents prevailing about the time of the Permanent Settlement, applies to Bengal Proper. But before we pass on to Behar, let us consider what lesson we learn from the figures quoted for Bengal. In the first place, we see that excepting Bankura and Birbhum, all the districts, regarding which information is available, show that the ancient rates were very low; that in the district of Hughli the maximum rate was one rupee and the minimum 6 annas in place of the present maximum Rs. 6 and minimum Rs. 1-12 annas, that in the district of Nuddea

the maximum did not amount to even Re. 1 and the minimum was less than 6 annas; that low rates are visible in other districts; and that evidence is forthcoming that such low rates as 1½ to 2 annas also prevailed. Secondly, that in districts regarding which no information is available about old rates, the present rates and the ratios that they bear to present value of produce are sufficient for forming an opinion regarding the general incidence per bigha of rent in olden times, if only the present and former prices of rice could be compared. Now, if our readers take the trouble to make such a comparison with the aid of the *data* we have given, they will find that, as a rule, the ryots were, in ancient times, very lightly assessed. A very small fraction of the value of rice, leaving out of consideration the price of the more valuable crops, is generally represented by the present rates of rents, which are very much higher than what prevailed at the Permanent Settlement. And whatever ground there may be for enhancing those rates so as to give the zemindars a larger share of the produce, it will not be possible to support the enhancement by the argument that the zemindars enjoyed a larger share also in former days. It is our conviction, based on a careful consideration of the revenue system of the Mogul, that generally speaking ryots were not oppressed by them with rack-renting. We have shown that the present rents include the *subadari abwabs*, which entered into the assessment of the revenue fixed at the Permanent Settlement of 1793. To those who point to the unrecognized or *secret abwabs*, levied by zemindars in ancient times, our reply is that such secret *abwabs* are also levied in many places, in the present times, as will appear from the following extracts from the Despatch No. 6 dated the 21st March 1882 from the Government of India to the Secretary of State :

"The Board of Revenue, in making a report dated the 12th October 1871, regarding the levy of illegal cesses in Orissa, referred to the ryots in that Division as being ignorant, listless, and impoverished. When submitting the matter to the Government of India in 1873, Sir George Campbell wrote:—'In some parts of Orissa, at any rate, the Government Settlement made direct with the hereditary ryots has been utterly set at naught; the Government leases have been taken from the ryots; the rents fixed by the Government officers have been increased manifold; and the main object of the extension of the settlement for a fresh term of thirty years after the famine, viz, permitting the ryots to hold on at the old settlement rates, has been utterly defeated.' After referring to the testimony from which he inferred that the ryots of Cuttuk were reduced to a state of poverty and subjection, and that the old *thani* or privileged ryots of Puri had sunk into tenants-at-will, he continued:—'For the rest these papers show conclusively the utter failure of the system adopted in Orissa of making a minute and careful settlement of the rights of all parties, and then leaving the settlement to itself without the supervision of Government and the machinery of tahsildars, kanungoes and village accountants, by which settlements are worked and carried out in other Provinces. Nowhere was the settlement more carefully made, or made in greater detail than in Orissa —perhaps no where were the status and privileges of the ryots so well protected in theory as in Orissa; yet we find, after the expiry of a thirty years' settlement, during which no annual or periodical papers were filed, and the settlement records were in no way carried on, that this whole system of record and protection has utterly collapsed; the records have become waste

paper, and the ryots supposed to be so well protected are amongst the most oppressed in India.' "

"In 1873, following up the information received from Orissa, Sir George Campbell instituted general inquiries as to the levy of illegal cesses throughout Bengal. It appeared that the practice was nearly universal; in fact, so wide-spread and deeply-rooted was it that the Lieutenant-Governor hesitated to attempt its thorough eradication."

As regards the payment of illegal cesses, the condition of the Bengal ryot of the present day is, therefore, not much better than that of the ryot of the pre-English era.

Now, passing on to Behar we find that the mode of assessment adopted in that Province was quite different from what prevailed in Bengal Proper. "In Behar," says Sir John Shore "the zemindar, when in charge of the collections, or the aumil who stands in his place on the part of Government, divides the produce of the lands with the cultivators in stated proportions. In Bengal, the settlement is made with the ryot, upon a standard called the *assal*, or original rate; with an accumulation of the taxes successively imposed." (Harington, vol. iii, p. 244).

Comparing the two systems prevailing in Bengal and Behar Sir John Shore, in another part of his Minute, says: "The great point required is to determine what is, and what is not oppression, that justice may be impartially administered according to fixed rules in Behar. The variations in the demands upon the ryots are not so great as in Bengal; the system of dividing the produce affords a clear and definite rule wherever that prevails, and regulations need not be so minute as those which I proposed for Bengal."

That the Behar system was at one time very popular with the ryots will appear from the following extract from a letter from Mr. A. Seton, Collector of the District of Behar, dated the 6th January 1793 :

" Had I not felt the advantage, which would result to the ryots from the demands of the renters being specified in writing, with clearness and precision, I must indeed have been destitute of discernment ; while on the other hand, to be aware of these advantages, and not to have exerted myself in carrying into effect regulations which had the promotion thereof for their object, would have been an act of criminal inattention to my public duty. The fact, however, is that my endeavours to this head have been unceasing, and that though I have not yet succeeded entirely to my wish, yet the general spirit of the regulations has been introduced ; and the ryots have been long relieved from those vexations, which the existence of *abwabs*, and the want of precision in the demands of the zemindars or renters, formerly occasioned. . . . In endeavouring to carry into full and literal execution the 59th article of the regulations in question, I have met with little or no opposition from the zemindars. My difficulties have originated with the ryots ; who, in this part of the country, have an insuperable aversion to receive *pottah*, or execute *kabulyats*, for specific quantities of land. The origin of this aversion is two-fold ; *viz.*, partly an apprehension lest, from the decease or loss of their cattle, kinsmen or servants, (by which term, I mean particularly to allude to *cummeas*, or ploughmen) they should be unable to bring the whole specified quantity into cultivation, and partly a dread lest after having brought it into cultivation, the expected crop should be damaged, or destroyed, by drought, storms, or inundation. . . . . "

"In consequence of this reluctance on the part of the ryots to enter into specific engagements, the following mode is pretty generally adopted in this part of the country. The zemindar signs, and deposits in each village, a voucher (which is, though somewhat improperly, called a *pottah*) specifying the rates and terms on which ryots may cultivate land in that village. This voucher serves the ryots as a guide. If they approve of the rates, they take attested copies of the instrument, and cultivate as much ground as they can; though, for the reasons above specified, they will not engage for a certain number of bighas. When the crop is ripe, the land is measured; and the ryot, or tenant, pays the rent thereof to the zemindar, according to the rates specified in the general village *pottah*. But in adjusting the accounts, it is always understood, though not expressed in writing, that the ryot is only to pay in *proportion to the produce*; and that in the event of his crop having failed, or being damaged, he is to receive a proportional deduction, according to the rates expressed in the village *pottah*; and this indulgence it is, which chiefly renders the ryots so unwilling to engage to pay rent for specific quantities of ground; lest, if they did, they should be considered as obliged to pay rent for the whole, even though they might not have been able to bring it into cultivation." (Harington Vol III. pp 424 to 426.)

The circumstances described in the above extracts from Mr. Seton's letter may have given rise to the different classes of Nakdi (payment in cash) and Bhowli (payment in kind) tenures that we now see in Behar. According to the Nakdi system, the ryot pays a certain rate of rent for each bigha of the land he cultivates like the ryot of Bengal Proper. Under the Bhowli system the landlord gets a share of the actual

outturn of fields which yield a crop. The Nakdi rates of rents are generally speaking not very high—certainly not higher than the rates now prevailing in Hughli. The rent that presses very heavily on the ryots in Behar is what is paid in kind, or the Bhowli. But, however, great the pressure may be now-a-days when population has increased and holdings have in consequence diminished in size, it must have been comparatively light in ancient times, when land was plentiful. The reason why the Government took a larger share (9-16) of the crops than was left to the ryots (7-16) is not difficult to understand. Under the Nakdi (Kheraj Mowazzuf) system, Government is saved a great deal of the trouble and expenses of collecting the revenue than under the Bhowli (Kheraj Mokasima) system. There is also more room for the collectors of revenue to cheat Government under the Bhowli than under the Nakdi system. For all these reasons, the proportion fixed as the Government share of the produce was high, but taking into consideration all the circumstances which went to reduce the revenue brought to the exchequer, when it was collected in *kind*, we are of opinion that the Government was more a loser than a gainer under the Bhowli system, which was more for the convenience of the ryots than for any thing else. Even now there are admirers of this system, as will appear from the following extract from a letter dated the 21st August 1858 from the Commissioner of Patna to the Secretary to the Board of Revenue.

" It may very probably be thought by those who have had no experience in this part of the country that payment in kind or the mixed payments which form the peculiarity of the Bhowli tenures, should be discouraged as much as possible and should not be sanctioned by the Legislature, but this would be a very great error. A large

portion of the land of this province is entirely dependent on rain for its fertility. In good seasons it yields heavy crops, in bad ones next to nothing." And bad and indifferent seasons are more common than good ones. The ryots having no capital and being an improvident race would be ruined by one or two bad seasons if they had to pay fixed money rents. Under a *Bhowli* or *Batai* system, on the contrary, where the rent is proportioned to the produce, they can always rub on, and if they have not much opportunity of making money they are tolerably secure from ruin. These tenures are, therefore, very popular, and when the landlord is a just man are perfectly statisfactory to all parties. Any attempt to abolish them would create discontent." (Report of the Government of Bengal on the Rent Quostion. Vol. II p. 19) Now, though we do not think that the Bhowli or metayer system can be for the good of either the ryot or the zemindar, the fact cannot be disputed that it is popular with the ryot. The Mogul Government can not, therefore, be blamed for having adopted this system in Behar, though it will be the duty of the present Government to settle the question with the light of its more advanced knowledge.

THE PERMANENT SETTLEMENT: WHAT IS SETTLED.

The history of the Land Revenue administration of Bengal by the English is a history of experiments and failures. The same desire for the easy solution of a most complex question and the same aversion to details, which generally make Englishmen indifferent Revenue officers at the present time, also interfered with their efficiency a hundred years ago. The following brief

account of the land revenue administration of the Company from the acquisition of the Dewani down to the conclusion of the Permanent Settlement illustrates our view.

It was in 1765 that the Company obtained from the Emperor of Delhi a grant of the Dewani authorizing them to administer the revenues of Bengal, Behar and Orissa. From 1765 to 1769 the revenues were managed, without any change of the former system, through two native Naibs or Deputy Dewans stationed at Moorshedabad and Patna. In 1769 European Supervisors were appointed to superintend the native officers employed throughout the country in collecting the revenue. The Supervisors were directed to obtain "sufficient and authentic accounts of the rent-rolls of the districts, by searching into the papers and records of the smallest as well as the largest, comparing their respective *Hastabood*, surveying and measuring the lands which appeared rated above or below their real value and extent." But in the course of the confusion that prevailed during the latter part of the Mogul Government and the earlier part of the English, the land revenue system of the Mogul which as we have seen, was so highly praised by Mr. Macpherson and Sir John Shore, fell into disuse and decay, and the consequence was that the Company enjoyed none of the advantages but suffered all the disadvantages of keeping on the old system.

"In the meantime" says Mr. Mill in his "History of British India," "financial difficulties were every day becoming more heavy and oppressive. On the 1st of January, 1771, when the President and Council at Fort William had received into their treasury 95,43,855 current rupees, for which they had granted bills on the Court of Directors, the cash remaining in it was only

35,42,761 rupees. At the same period the amount of bond debts in Bengal was £612,628; and at the beginning of the following year it had swelled to £1,039,478."

But in spite of these difficulties large dividends were taken by the Company every six months. "These desperate proceedings" continues Mr. Mill, "hurried the affairs of the Company to a crisis. On the 8th of July 1772, on an estimate of cash for the next three months, that is, of the payments falling due, and the cash and receipts which were applicable to meet them, there appeared a deficiency of no less than £1,293,000. On the 15th of July the Directors were reduced to the necessity of applying to the Bank for a loan of £400,000. On the 29th of July they applied to it for an additional loan of £300,000, of which the Bank was prevailed upon to advance only £200,000. And, on the 10th of August, the Chairman and Deputy waited upon the Minister, to represent to him the deplorable state of the Company, and the necessity of being supported by a loan of at least one million from the public" (Mill's History Vol. III. p. 342.)

Hitherto the revenues had been settled from year to year, but in 1772 it was determined to conclude a settlement for a period of five years,—and the *easiest* though not the *best* mode of managing through farmers was adopted. The President (Mr. Hastings) and Council in their proceedings dated the 14th May 1772 assigned the following reasons for letting the lands in farm: "There is no doubt that the mode of letting the lands in farm is in every respect the most eligible. It is the most simple, and therefore the best adapted to a government, constituted like that of the Company, which cannot enter into the detail and minutiæ of the collections. Any mode of agency, by which the rents

might be received, is liable to uncertainty; to perplexed and inextricable accounts ; to an infinity of little balances and to embezzlements; in a word, both the interest of the State, and the property of the people must be at the mercy of the agents; nor is it an object of trivial consideration, that the business of the service, already so great, that much of it is unavoidably neglected, would be thereby rendered so voluminous, and the attention of the Board so divided, that nothing would be duly attended to; the current affairs would fall into irrecoverable arrears; the resolutions upon them be precipitate and desultory; the authority of the Government set at naught; the power which it must necessarily delegate to others would be abused; and the most pernicious consequences ensue, from the impossibility of finding time to examine and correct them. That such would be the case, we with confidence affirm, since we already experience tho existence of these evils, in part, from the great increase of affairs, which has devolved to the charge of this Government and the want of a reduced system, no less than from a want of immediate inspection and execution. This is a point well worth the attention of the Board, in every proposition that may come before them, as essentially respecting the constitution and general interests of the Company" (Harington Vol. II. p. 14.)

The intelligent reader need not be reminded that however advantageous the farming system may have been to the Company whose affairs were, as we have seen, greatly involved in financial difficulties, it must have been as harassing to the people in 1772 as we find it to be a hundred years later. The mode in which this farming settlement was concluded is described by Mr. Mill in the following words :—

" The Committee of Circuit with whom, though a Member, Mr. Hastings did not proceed, first began to receive proposals at Kishenaghur. But the terms which were offered were in general so unsatisfactory both in form and amount, that the Committee deemed them inadmissible; and came speedily to the resolution of putting up the lands to public auction. It was necessary to ascertain with as much exactness as possible, the nature and amount of the different taxes which were to be offered to sale. For this purpose a new Hustabood, or schedule of the taxes, was formed. * * * * When the zemindars, and other middlemen of ancient standing, offered for the lands which they had been accustomed to govern, terms which were deemed reasonable, they were preferred; when their offers were considered as inadequate, they were allowed a pension for their subsistence and the lands were put up to sale." (History of British India Volume III. p. 367)

But were the expectations formed of this mode of settlement realized? We shall again quote from Mr. Mill.

" At an early period, under the five years' settlement (of 1772), it was perceived, that the farmers of the revenue had contracted for more than they were able to pay. The collections fell short of the engagements even for the first year; and the farms had been let upon a progressive rent. The Governor-General was now accused by his colleagues of having deceived his honorable masters by holding up to their hopes a revenue which could not be obtained. * * "

"The failure of exaggerated hopes was not the only evil whereof the farm by auction was accused. Zemindars, through whose agency the revenues of the district had formerly been realized, and whose office and authority

had generally grown into hereditary possessions, comprising both an estate and a magistracy, or even a species of sovereignty, when the territory and jurisdiction were large; were either thrown out of their possessions; or from an ambition to hold the situation which had given opulence and rank to their families, perhaps for generations, they bid for the taxes more than the taxes could enable them to pay; and reduced themselves by the bargain to poverty and ruin. When the revenues were farmed to the zemindars, these contractors were induced to turn upon the ryots, and others from whom their collections were levied, the same rack which was applied to themselves. When they were farmed to the new adventurer who looked only to a temporary profit, and who had no interest in the permanent prosperity of a people with whom he had no permanent connexion, every species of exaction to which no punishment was attached, or of which the punishment could by artifice be evaded, was to him a fountain of gain." (Vol IV. p. 3).

"The five years' lease expired in April, 1777; and the month of July of that year had arrived before any plan for the current and future years had yet been determined By acknowledgment of all parties, the country had been so grievously over-taxed, as to have been altogether unable to carry up its payments to the level of the taxation. According to the statement of the Accountant-General, dated the 12th of July, 1777, the remissions upon the five-years' leases amounted to 1,18,79,576 Rupees; and the balances, of which the greater part were wholly irrecoverable, amounted to 1,29,26,910 rupees. * * * On the 15th of July, it was determined that the following plan should be adopted for the year; that the lands should be offered to the old zemindars on the

rent-roll or assessment of the last year, or upon a new estimate formed by the provincial Council." (Vol. IV. pp. 9 and 10).

The above mode of settlement was renewed from year to year, till 1781, when a Committee of Revenue was formed. "It was intrusted to the Committee to form a plan for the future assessment and collection of the revenues. And the following are the expedients of which they made choice: to form an estimate of the abilities of the several districts, from antecedent accounts, without recurring to local inspection and research: to lease the the revenues, without intermediate agents, to the zemindars, where the zemindary was of considerable extent: and, that they might save government the trouble of detail, in those places where the revenues were in the hands of a number of petty renters, to let them altogether, upon annual contracts." (Mill. Vol. IV. p 254.) But nothing seemed to improve the financial position of the Company. "The net territorial revenues of Bengal, Behar, and Orissa, instead of increasing had actually declined. In the year ending the 1st of May 1772 (the last year of management through native naib Dewans) they amounted to the sum of 2,126,766£. and in the year ending on the same day in 1785, to that of 2,072, 968£. In Lord Cornwallis's celebrated revenue letter dated the 16th November 1786 it is allowed, that the state of the accounts exhibits a debt in India of 8,91, 25,518 rupees, and assets valued at 5,81,24,567, with a balance against the Company of 3,10,00,950. But Lord Cornwallis observes, that the amount of assets is so much made up for the sake of show, that is, a delusion, that it presents a result widely different from the truth; and that the balance between the debts, and such assets as are applicable to their extinction, would not, in his

opinion, fall short of 7,50,00,000 rupees." (Vol. IV. p. 358.)

In 1786, " complaint was made of the heavy arrears outstanding on the settlement of the last four years; and the country was presented as exhausted and impoverished. * * * * For the purpose of improvement the Court of Directors directed that the settlement should be with the zemindars. Knowledge sufficient for an assessment, they presumed, was already acquired. They prescribed the period of ten years, as the limit to which the settlement should be confined in the first instance But they declared their intention to render it permanent, provided, on experience, it should meet their approbation." But Lord Cornwallis finding that the Court were mistaken about the sufficiency of the knowledge for making a permanent settlement of the revenne suspended carrying out the above orders until sufficient information was collected. In the mean time annual settlements were made by the district collectors under the superintendence of the Committee of Revenue now called the Board of Revenue.

In 1789, instructions were issued in Bengal, and in the following year in Behar, for effecting settlements agreeably to the orders of the Court of Directors. " A complete code of regulations was promulgated for the new system in November, 1791. And the land revenue realized in that year from Bengal, Behar, and Orissa, together with Benares, amounted to 3,02,54,563 sicca rupees, or 3,509,530£. It was not however, before the year 1793, that the decennial settlement was executed in every district; and that the compl etion of the measure was announced." (Mill Vol. V p. 348). This settlement was proclaimed to be permanent on 1st May 1793.

Now, our object in giving the above account of the revenue administration of Bengal by the Company from their acquisition of the Dewani in 1765 down to the Permanent Settlement of 1793, has been to show how utterly incompetent our first English rulers proved themselves for the management of the land revenue. So long as they attempted to manage it themselves the revenue fell off and the country became "exhausted and impoverished." And, no doubt, Mr. Kristo Das Pal is justified in saying that, the Permanent Settlement "in those days saved the public treasury." But while the advantages which the Government derived from the settlement were only *Temporary* those which the Zemnidars derived were *Permanent.*

RIGHTS OF ZEMINDARS UNDER THE PERMANENT SETTLEMENT.

The following Sections of Regulation 1 of 1793 describe the rights that were for the first time conferred no the zemindars by the Permanent Settlement.

"It is well known to the zemindars, independent talukdars and other actual proprietors of land, as well as to the inhabitants of Bengal, Behar and Orissa, in general, that, from the earliest times until the present period, the public assessment upon the lands has never been fixed, but that according to established usage and custom, the rulers of these provinces have from time to time demanded an increase of assessment from the proprietors of land; and that, for the purpose of obtaining this increase, not only frequent investigations have been made to ascertain the actual produce of their estates, but that it has been the practice to deprive them of

the management of their lands and either to let them in farm, or to appoint officers on the part of Government to collect the assessment immediately from the ryots. The Honourable Court of Directors, considering these usages and measures to be detrimental to the prosperity of the country, have with a view to promote the future ease and happiness of the people, authorized the foregoing declarations; and the zemindars, ndependent talukdars and other actual proprietors of land, with or on hehalf of whom a settlement has been or may be concluded, are to consider these orders fixing the amount of the assessment as irrevocable and not liable to alteration by any persons whom the Court of Directors may hereafter appoint to the administration of their affairs in this country." (clause 1. Section VII. Regulation I of 1793.)

"That no doubt may be entertained, whether proprietors of land are entitled, under the existing Regulations, to dispose of their estates without the previous sanction of Government, the Governor-General in Council notifies to the zemindars independent talukdars, and other actual proprietors of land, that they are privileged to transfer to whomsoever they may think proper, by sale, gift, or otherwise, their proprietary rights in the whole, or any portion of their respective estates, without applying to Government for its sanction to the transfer, and that all such transfers will be held valid, provided that they be conformable to the Mahomedan or the Hindu law (according as the religious persuasions of the parties to each transaction may render the validity of it determinable by the former or the latter code), and that they be not repugnant to any Regulations, now in force which have been passed by the British administrations, or to any Regulations that they may hereafter enact." (Section IX of Regulation I. of 1793.) The disadvantages

to which the zemindars were subject under the system prevailing before the Permanent Settlement are described as follows, in the Preamble to Regulation II. of 1793.

"The property in the soil was never before formally declared to be vested in the land-holders, nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government. With respect to the public demand upon each estate, it was liable to annual or frequent variation at the discretion of Government. The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the ryots or tenants for each *bigah* of which, after deducting the expenses of collection, ten-elevenths were usually considered as the right of the public, and the remainder, the share of the land-holder. Refusal to pay the sum required of him, was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government, and the above mentioned share of the land-holder, or such sum as special custom or the orders of Government might have fixed, was paid to him by the farmer or from the public treasury. When the extension of cultivation was productive only of a heavier assessment, and even the possession of the property was uncertain, the hereditary land-holder had little inducement to improve his estate; and monied men had no encouragement to embark their capital in the purchase or improvement of land, whilst not only the profit, but the security for the capital itself, was so precarious. The same causes therefore which prevented the improvement of land, depreciated its value."

The Zemindar as created by the Permanent Settlement is described by Mr. Harington in the following terms.

"A land-holder, possessing a zemindary estate, which is heritable and transferable by sale, gift, or bequest; subject under all circumstances to the public assessment fixed upon it; entitled, after payment of such assessment, to appropriate any surplus rents and profits, which may be lawfully receivable by him from the under-tenants of land in his zemindary, or from the cultivation and improvement of untenanted lands; but subject nevertheless to such rules and restrictions as are already established, or may be hereafter enacted by the British Government, for securing the rights and privileges of ryots and other under-tenants, of whatever denomination, in their respective tenures; and for protecting them against undue exaction, or oppression" (Analysis, Vol. III. p. 404).

The effect that the Permanent Settlement has had in increasing the zemindar's rental is thus described by Mr. Justice Cunningham in a minute lately published by him.

"There are 130,000 revenue-payers, who pay the Government a land revenue of about 3½ millions sterling and enjoy a rental officially returned at something over 13 millions sterling. This 3½ millions of revenue is only half a million larger than that fixed at the time of the Permanent Settlement, viz. 3 millions. It is reckoned that, as the zemindar's share was fixed at one-tenth of the gross proceeds of the rent, 'the net rental' (i.e. share available for the proprietors after payment of revenue) at that time must have been between £300,000 and £400,000. While the Government revenue, accordingly, has increased only by half a million, the landlord's share has risen from, say £350,000, to £9500,000. But this rental of 13 millions is only an official return for road-cess purposes, and is believed by many good judges to

reprcsent very inadequately the whole amount which in one way or another the proprietors receive. One writer reckons the entire amount paid annually by the occupants of the soil at between 25 and 30 millions sterling."

RIGHTS OF RYOTS UNDER THE PERMANENT SETTLEMENT.

HAVING seen what the rights of the zemindars were under the Permancnt Settlement, we have next to consider what rights were conferred on the ryots by that Settlement. As this is a very difficult question and has given rise to much discussion, we shall in the first place lay before our readers the system of assessment that was found to prevail in the country in the course of the inquiries held by Sir John Shore previous to the conclusion of the Permanent Settlement.

" Where the rates of land are specific and known, a ryot has a considerable security against exaction, provided the officer of Government attends to his complaints, and affords him redress; and without this, he can have none. The additional security which he derives from a pattah, supposing it to be properly drawn out, is this; that it specifies, without reference to any other account, the terms upon which he holds the land, and the amount of the *abwab* or cesses, which are not mentioned in the *nirkhbundy*, nor always in the *jummabundy*. In those places where the accounts are kept with the utmost regularity, and the established rates adhered to, the annual adjustment of the rent to be paid by each ryot is not made without difficulty. The usual mode is to form a survey of the ground, and compare it with the accounts of the former year in which every species of cultivation

is specified, together with the relative situation of the land. Where the general appearance of the land corresponds with the detail of it in the accounts, the rent is adjusted without much difficulty; but where it differs, either by exhibiting a greater quantity of land in cultivation, or any article of a superior quality on the same land, the rents of such land are demanded, and a measurement is often adopted to determine them. The nature of the business shows that it can only be effected by a person well versed in it. In the ordinations of the Emperors, the officers employed in the collections are constantly encouraged, and required, to preserve the more valuable species of produce. I suppose that the rents in Bengal may be collected according *to ascertained rates, throughout two thirds of the country*; and notwithstanding the various abuses which I have detailed, it is evident that some standard must exist; for, without it, the revenues could never be collected from year to year as they have been. Exactions on one side are opposed by collusions on the other; but we may with certainty conclude, that the ryots are as heavily assessed as ever they were. . . . . Pattahs to the *khoodkasht* ryots, or those who cultivate the land of the village where they reside, are generally given without any limitation of period; and express that they are to hold the lands, paying the rents from year to year. Hence the right of occupying originates; and it is equally understood as a prescriptive law, that the ryots who hold by this tenure cannot relinquish any part of the lands in their possession, or change the species of cultivation, without a forfeiture of the right of occupancy; which however is rarely insisted upon: the zemindars demand and exact the difference. I understand also, that this right of occupancy is admitted to extend even to the

heirs of those who enjoy it. *Paikasht* ryots, or those who cultivate the land of villages where they do not reside, hold their lands upon a more indefinite tenure. The pattahs to them are generally granted with a limitation in point of time; and where they deem the terms unfavourable, they repair to some other spot. Such are the general usages and practice, as far as I have been able to ascertain; but there are local customs which can only be known by an examination on the spot. In some parts of the country, I understand that the zemindar is, by prescription, *precluded from measuring the lands of the ryots, whilst they pay the rents according to pattah and jummabundy.* Amongst the inconveniences and abuses which may be inferred from this detail, the principal appear to be these:—1. The gradual introduction of new impositions. 2. The number of them, and intricacy attending the adjustment of the ryots' accounts." (Harington's Analysis, Vol. III. pp 436 to 438.)

After having given accounts of the systems prevailing in some of the districts, Sir John Shore proceeds:—"This detail, without extending it unnecessarily, points out the objections to the immediate establishment of general rules, and the necessity of adapting them to the local circumstances of each district. In deviating from established usages, we run a risk of substituting others of more detriment, in their room. No order of Government should ever be issued, unless it can be enforced; to compel the ryots to take out pattahs where they are already satisfied with the forms of their tenure, and the usages by which rents are received, would occasion useless confusion; and to compel the zemindars to grant them under such circumstances, or where the rules of assessment are not previously ascertained, would, in my opinion, be nugatory. . . . . The regulation of the rents of

the ryots is properly a transaction between the zemindar, or landlord, and his tenants; not of Government; and the detail attending it is so minute, as to baffle the skill of any man not well versed in it. *Where rates exist, or where the collections are made by any permanent rules,* the interference of the collector would be unnecessary; where the reverse is the case, he would find it difficult to adjust them. Errors committed by a collector should not be left to the subsequent corrections of a zemindar; *but it is the duty of an officer of Government to correct those of zemindars.* Nothing but necessity should ever induce us to authorize the collector to fix the rates of assessment on the land. In trusting to established custom, and to the moffussil officers, under the inspection of the zemindary servants, we have a more safe reliance, than the interposition of a collector, who has already sufficient employment to occupy his whole time. I do not see the same objection in authorizing him to affix his signature to the pattah or jummabundy, of a ryot, after it has been settled by zemindary officers." (Harington Vol. III. pp. 444-45).

Sir John Shore proposed, towards the conclusion of his minute, certain rules for the protection of talookdars and ryots from which the following extracts are made :—

(1) "Zemindars are to enter into engagements with the talookdars situated within their Zemindaries."

(2) "No zemindaris to be authorized to demand any increase from the talookdars under his jurisdiction, except upon proof to the collector, that he is entitled to do so."

(3) "The zemindar is to *let* the remaining lands of his zemindary, under the *prescribed restrictions*, in what manner he may think proper; but every engagement contracted by him with under-renters shall be specific as

to the amount and conditions of it; and all sums received by any zemindar, or renter, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount."

(4) "No person contracting with the zemindar or talookdar, or employed by him in the management of the collections, shall be authorized to take charge thereof without an *amilnamah*, or written commission, signed by the zemindar or talookdar. Copies of all such commissions are to be deposited in the sudder cutcherry of the collectorship."

(5) "Whereas from the ignorance, inattention, and oppression of the zemindars, the greatest abuses have been practised in the collections, and the ryots have been exposed to exactions, the following rules are now prescribed to all zemindars, talookdars, and persons entrusted with the revenues, for their immediate direction and guidance. That the rents to be paid by the ryots, by whatever rule or custom they may be demanded, shall be specific as to their amount. If by a pattah, containing the *asal* and *abwab*, the amount of both shall be inserted in it; and the ryot shall not be bound to pay any thing beyond the amount specified, on account of *khurcha*, *selamy* or any other article. If by a *theeka* pattah, the whole amount payable by the ryots is to be inserted in it. If by any rule or custom, such as the payments of the last and preceding year, the rate of the village, pergunnah, or any other place, an account is to be drawn out in the beginning of the year, showing what the ryots are to pay by such rule or rate, and a copy of it to be given to them. Where the rents are adjusted upon a measurement of the lands after cultivation, the rate and terms of payment shall be expressed in the pattah. If

by any established and recorded *jummabundy*, that is to be the rule for demanding the rents. If the rents are paid in kind, the proportion which the ryot is to pay shall be specified, either in an account, or written engagement. In every mofussil cutcherry, *nirikbundy*, or rates of land, shall be publicly recorded. . . . . Where no *nirikbundy* of the land exists, the zemindar shall be bound to form the same, either for his whole zemindary, or such parts thereof where it may be wanted, within a prescribed period, to be determined by the collector. No zemindar, farmer, or person acting under their authority, shall be allowed to cancel the pattahs of *khoodkasht* ryots, except upon proof that they have been obtained by collusion; or that the rents paid by them, within the last three years, have been reduced below the rates of the nirikbundy of the pergunnah; or that they have obtained collusive deductions; or upon a general measurement of the pergunnah, for the purpose of equalizing and correcting the assessment. . ."

(6) "As the impositions upon the ryots, from their number and uncertainty, have become intricate to adjust, and a source of oppression to the ryots, the zemindars shall be compelled to make a revision of the same, and to simplify them, by a gradual and progressive operation, as follows:—They shall begin with those pergunnahs where the impositions are most numerous, and having obtained an account of them, shall, *in concert with the ryots*, consolidate the whole, as far as possible, into one specific sum. . . . . Having prepared this account, *they shall submit it to the collector for his inspection*; *after which it is to be enforced by the authority of Government* . . . . Where by *mutual consent of the ryots and the zemindars*, the abwab can be wholly reduced and consolidated, it shall be done accordingly;

and the rates of the land, according to the nature of the soil and the produce, be the rule, for fixing the rent. The rents of each pergunnah in the zemindary to be annually adjusted in the same manner, until the whole be completed; and the exact proportion which the *abwab* and *khurcha* bear to the *asol* jumma, to be precisely determined. The zemindar is to be positively enjoined to regulate a certain proportion of his zemindary annually, so that the *whole* be completely performed within a certain number of years from the date of his agreement." (Harington, Vol. III. pp 453-457).

Mr. Harington calls the above mode of adjustment of rents the " permanent plan for the ease and security of the ryots." (p. 457)

We have seen that different modes of adjustment of rents prevailed in Bengal at the time the Permanent Settlement was made and that Sir John Shore proposed certain rules for the protection of the interests of the ryots. We have now to consider how far those interests were protected by the Regulations. Our readers will see that the following sections of Regulation VIII of 1793 contain the rules recommended by Sir John Shore. The first 47 sections of this Regulation lay down rules regarding the settlement made with the zemindars and other actual proprietors. Sections 48 to 51 contain rules for the protection of dependent talukdars existing at the time of the settlement. With section 52 begin the rules which, as we shall hereafter see, have been the subject of much discussion.

" LII. The zemindar, or other actual proprietor of land, is to let the remaining lands of his zemindari or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers shall be specific as to the

amount and conditions of it; and all sums received by any actual proprietor of land or any farmer of land of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this Section are the following :—

"LIII. No person contracting with a zemindar, independent talukdar, or other actual proprietor, or employed by him in the management of the collections, shall be authorized to take charge of the lands or collections without an *amilnamah* or written commission, signed by such zemindar, independent talukdar or other actual proprietor.

"LIV. The impositions upon the ryots, under the denominations of *abwab*, *mahtut* and other appellations, from their number and uncertainty having become intricate to adjust and a source of oppression to the ryots all proprietors of land and dependent talukdars, shall revise the same, in concert with the ryots, and consolidate the whole with the *asal* into one specific sum. This [should be done within a specified period of time.]"

"LV. No actual proprietor of land, or dependent talukdar or farmer of land, of whatever description, shall impose any new *abwab* or *mahtut* upon the ryots, under any pretence whatever. . . .

"LVI. It is expected that, in time, the proprietors of land, dependent talukdars, and farmers of land, and the ryots, will find it for their mutual advantage to enter into agreements, in every instance, for a specific sum for a certain quantity of land, leaving it to the option of the latter to cultivate whatever species of produce may

appear to them likely to yield the largest profit. Where, however, it is the established custom to vary the pattah for lands according to the articles produced thereon, and while the actual proprietors of land, dependent talukdars or farmers of land, and ryots in such places, shall prefer an adherence to this custom, the engagements entered into between them are to specify the quantity of land, species of produce, rate of rent, and amount thereof, with the term of the lease, and a stipulation that, in the event of the species of produce being changed, a new engagement shall be executed for the remaining term of the first lease, or for a longer period if agreed on; and in the event of any new species being cultivated, a new engagement, with the like specification and clause, is to be executed accordingly.

"LVII. *First.* The rents to be paid by the ryots, by whatever rule or custom they may be regulated, shall be specifically stated in the pattah, which, in every possible case, shall contain the exact sum to be paid by them.

"*Second.* In cases where the rate only can be specified, such as where the rents are adjusted upon a measurement of the lands after cultivation or on a survey of the crop, or where they are made payable in kind, the rate and terms of payment and proportion of the crop to be delivered, with every condition, shall be clearly specified.

"LVIII. Every zemindar . . . shall prepare the form of a pattah or pattahs conformably to the rules above prescribed, and adapted to the circumstances of his estate or taluk. [Forms of pattahs after being approved by the collector of the district should be registered in the zillah court, and copies to be deposited in each of the principal cutcherries.]"

"LIX. A ryot, when his rent has been ascertained and settled, may demand a pattah from the actual proprietor of land, ... and any refusal to deliver the pattah, upon being proved in the court of the Dewany Adalot of the zillah, shall be punished by the court, by a fine . . .

"LX. *First.* All leases to under-farmers and ryots, made previous to the conclusion of the settlement, and not contrary to any regulation, are to remain in force until the period of their expiration, unless proved to have been obtained by collusion or from persons not authorized to grant them.

"*Second.* No actual proprietor of land or farmer, or persons acting under their authority, shall cancel the pattahs of the Khoodkasht ryots, except upon proof that they have been obtained by collusion; or that the rents paid by them within the last three years have been reduced below the rate of the nirikbundy of the pergunnah; or that they have obtained collusive deductions; or upon a general measure of the pergunnah for the purpose of equalizing and correcting the assessment."

The above sections have, as we have said, given rise to much discussion. Dr. Field, who in this case represents the zemindars, has arrived at the following conclusions:—

(1) The "prescribed restrictions" of section 52 are not confined to section 53, but extend down to section 64.

(2) Subject to the restrictions contained in sections 53 to 64, "proprietors were authorized in 1793 to let, in whatever manner they thought proper, such lands as were not at that time in the possession of dependent talukdars, mokurraridars and istemrardars; and that this letting meant and included letting to ryots for the purposes of cultivation."

(3) "It was of the first importance, when the zemindars of 1793 were declared 'proprietors' of the lands included in their zemindaries, that the nature of their proprietorship should be defined—that it should at least have been expressly stated, if such was the intention of the Government, that they were not to consider themselves proprietors in the English sense of the term."

(4) "The Goverument and the Legislature of 1793, while determined to put an end to *enhancement by abwabs* recognized, had no intention of interfering with that enhancement of money-rents, which would easily and naturally have resulted from periodically converting a certain proportion of the annual produce into a money rent by the well known process of a measurement and assessment."

Now, though in our opinion the ryot's case is not at all weakened by accepting Dr. Field's interpretations of "prescribed restrictions" and "letting," those interpretations do not appear to us to be correct. Dr. Field contends that the word "restrictions" would not have been used if it was meant to apply to only section 53, as that section contains only *one* "restriction," namely that *amilnamah* must be given to persons taking charge of lands or collections on behalf of actual proprietors. But, a reference to extract No. 4 from the Draft Rules prepared by Sir John Shore will show that he proposed *two* restrictions and not one. First, that *amilnamahs* should be given, and secondly, that copies of all such *amilnamahs* should be deposited in the sudder kutcherry. This second restriction was not embodied in the regulation, but is it not likely that the plural form remained unchanged through an oversight ?

Regarding the meaning of the word "let" used in

section 52, Dr. Field says, " the term 'let' was not a very appropriate expression to use in respect of *khud-kasht* ryots, who were at the time upon the land and to whom it was merely intended to give pattahs specifically setting forth the exact amount of rent payable by them. Those who drafted the Regulation of 1793 were not however lawyers: and, as the zemindars had been created proprietors, it was natural that the draftsmen should speak of their " letting" their lands, although, when we read together the whole of the Regulations on the same subject passed on the same day, it is clear that it was not intended to use this term in its legal sense, and that the 'letting' meant was very different from a demise of land by an absolute owner to a stranger who has no rights except those created by the demise" (Digest p. 195.)

With great deference for the opinion of Dr. Field, we beg to submit that it is not clear from a study of the Regulations, that, " it was not intended to use the term 'let' in its legal sense." The draftsmen of the Regulations may not have been lawyers, but it does not appear that they were ignorant of the difference between " letting in farm," and " letting to ryots for the purposes of cultivation." We find them invariably using distinguishing terms whenever they had occasion to refer to both. In illustration of this, we would point to sections 1, 2, and 5 of Regulation XL of 1793, in which " letting lands in farm" is distinguished from granting pattahs to ryots or other persons for the cultivation of lands.

Dr. Field finds fault with the authors of the Permanent Settlement for leaving, what he considers, undefined the term " proprietor" as applied to the zemindar. He considers that " it should at least have been express-

ly stated if they (the zemindars) were not to consider themselves proprietors in the English sense of the term." Following the suggestion thrown out by him, Mr. Kristo Dass Pal and other advocates of zemindary rights have argued that the word "proprietor" used in the Permanent Settlement Regulations meant "actual and absolute proprietor of the soil" in the same sense in which it is used in England. There cannot be a greater mistake than this. The rights conferred on the zemindars were clearly defined in the Regulations, and they could not be anything more than what the Regulations contained. The term "proprietor" has not, however, been left undefined. Section 2 of Regulation III of 1794 lays down that whenever the designation, "a proprietor of land," occurs in any Regulation, "it is to be considered to include zemindars, independent talukdars, and all actual proprietors of land, *who pay the revenue, assessed upon their estates*, immediately to Government." The Hon'ble Mr. Ilbert also, following another line of argument, has arrived at the conclusion that the term "proprietor" was used simply to mean the person that paid revenue immediately to Government. "The East India Company", says he, "found a number of persons claiming interests in the soil. Which of those persons had the best claim, as against the others, to be considered true owner of the soil, was a theoretical question of enormous difficulty. But which of those persons ought, for land revenue purposes, to be dealt with as owners of the soil, and primarily liable for land revenue accordingly, was a practical question, which admitted of practical solution. The East India Company settled it in Bengal by selecting the zemindars as the persons to deal with, and they christened the landholders or proprietors accordingly."

We now come to the question as to the zemindar's power under the Legislature of 1793 to enhance ryots' rents. "The Code of 1793," says Dr. Field "contains no express direction that the rents of ryots should not be enhanced. No such intention is discoverable by any possible interpretation that can be put upon the language of the Code itself. I shall endeavour to show that there is on the contrary a clear intention that these rents should be enhanced; and that, while prohibiting under severe penalties an irregular mode of enhancement by *abwabs*, the Legislature contemplated enhancement by a method which was well understood in the country and by the people of the country, and which had *actually been put into practice by the English revenue authorities of that day in order to obtain, under the order of the Court of Directors, the information necessary for the settlements which preceded the Decennial Settlement.* The revenue payable to the Government had always consisted of a definite proportion of the produce. This proportion varied according to the nature of the crop, and was originally paid in kind. In or about 1582 A.D., Raja Todar Mal. . . made a settlement of the subah of Bengal . . . . Let us see how this settlement was managed. First, a measurement of the land was made. . . . The next step was to ascertain the produce of each *bigha*, and fix the proportion payable to Government. . . . . The Government share being thus determined, Todar Mal next laid down rules for commuting the value of this share into a money payment. The prices current for the previous nineteen years were obtained from each village, and the value of the Government share was calculated upon the average of these prices. The settlement was at first made annually, but this was found inconvenient to Government

and vexatious to the ryots : and settlements then came to be made for ten years on an average of the preceding decennial period, the rules for commutation being also revised according to the market rates. This was the process of *measurement and assessment* with which the people of the country were thoroughly familiar. . . This mode of assessing and collecting the revenue continued for about a century, during which time zemindars and others were gradually introduced between the Government and the ryots. Jafier Khan, who died in 1725, introduced the first *subahdari abwab.* . His son-in-law and successor, Sujah-ud-din, introduced four *subahdari abwabs.* Aliverdi Khan succeeded him and added three more. . . . . Each *abwab* was so much, say an anna or two pice, in each rupee of the ryot's *asul* or total rent, calculated by the nirkbundy of the last assessment. Here then was a ready method of increasing the revenue without the trouble of a measurement and assessmemt and calculation of rates and tables of commutation : and it soon superseded these more laborious processes." (Digest, pp 197 to 199)

The above extracts contain Dr. Field's historical account of the mode of assessment prevailing since the settlement of Todar Mal, and before we proceed further with this discussion let us examine how far his statements are correct. According to him the mode of settlement introduced by Raja Todar Mal was repeated decennially for about a century. "This mode of assessing and collecting the revenue continued," says he, "for about a century." If this was the case, the revenue assessed by Todar Mal in 1582 must have varied, more or less, at each decennial settlement. But we know that the assessment remained unchanged till the time of Sujah Khan. "The *first increase*", says Dr. Field in the book lately published by him, "of this assessment

(of Todar Mal) was made 76 years afterwards in 1658 by Sujah Khan" (Landholding and the Relation of Landlord and Tenant, p. 440). If then, the first increase to the assessment of Todar Mal was made 76 years after, are we to suppose that, though the processes of measurement and valuation were gone through decennially, yet no change was found to have taken place in the productive powers of lands or the prices of produce during three-quarters of a century? Surely, Dr. Field will not expect us to believe that the successors of Todar Mal decennially incurred the heavy expenses of measurement and valuation without getting thereby any increase to the revenue. "The instructed reader" says he, in a foot note at page 193 of the Digest, "need not be reminded that periodical revision (of rates) was part of Todar Mal's system and that decennial revisions were for a long time usual." The instructions we have received from Dr. Field's books, not to speak of others, have, however taught us that whatever might have been the intention of Raja Todar Mal or Emperor Akber about "decennial revisions" it was never carried out; and that the settlement of 1582 by Todar Mal was the *first* and *last* of its kind. The people of the country in 1793, could not, under the above circumstances, have been aquainted with the mode of settlement followed by Todar Mal 200 years before, yet Dr. Field would have us believe that they were "thoroughly familiar" with it.

If our readers will now turn their attention again to the extract we have made from Dr. Field they will see that he speaks of the method of enhancement according to proportion of the produce having been "actually put into practice by the English Revenue Authorities of that day" (1793). We need hardly remind them that, as we have shewn in our account of the Land Revenue admi-

nistration of Bengal, all that the English Revenue authorities attempted to do was to survey and measure only *those lands which appeared, "rated above or below their real value and extent."* This was quite different from a *revision* of *rates* according to the rules laid down by Todar Mal. It seems to us that Dr. Field has confounded the enhancement of *rents* owing to a change in the classification of the soil or to an increase in area with the enhancement of *rates* of *rents* of the different *classes* of lands.

We have shown how Dr. Field has fallen into the error of believing that the process of measurement and assessment followed at the settlement of Rajah Todar Mal was repeated decennially for about a century afterwards, and that though it was subsequently replaced by the introduction of *abwabs*, the people of the country were thoroughly familiar with it. We have now to consider how far the Regulations of 1793 empowered zemindars to enhance *rates* of rents.

At page 201 of his Digest Dr. Field puts the case for the zemindar as follows :—

"Regulation VIII. of 1793 contains, as we have seen, specific provisions protecting certain *mokurraridars* and *istemrardars* and dependent talookdars from increase of jumma or enhancement under certain circumstances. If there were a general rule, or a general intention discoverable, that all persons holding under proprietors should be exempt from enhancement, there would have been no occasion for these special provisions. According to the ordinary rules of construction, the enactment of special provisions, exempting certain classes of tenures from enhancement under certain circumstances, supposes the existence of a rule of enhancement applicable to tenures generally. Depen-

dent talookdars are even declared liable to increase of jumma in certain cases. Then proprietors are declared entitled to let their remaining lands, under the prescribed restrictions in whatever manner they may think proper, and this, as we have seen, includes "letting" to ryots. We have examined prescribed restrictions, and we have seen that not one of them implies or includes an absolute prohibition against enhancement while one of them, to which I shall now more specially advert, recognises the process of measurement and assessment, which, as we have seen, includes every rule of enhancement embodied in Act X. of 1859. Clause 2 of section 60 is as follows:—'No actual proprietor of land, or farmer, or persons acting under their authority shall cancel the pattahs of the *khoodkasht ryots* except upon proof that they have been obtained by collusion; or that the rents paid by them within the last three years have been reduced below the rate of the nirkbundy of the pergunnah; or that they have obtained collusive deductions; or upon a *general measurement of the pergunnah for the purpose of equalizing* and *correcting the assessment.*' It is clear from these provisions that the pattahs of ryots other than khoodkasht ryots could be cancelled, and that such other ryots had no protection whatever from enhancement, while the *khoodkasht* ryots were protected from enhancement beyond the pergunnah rate (that is, the nirkbundy made at the last measurement and assessment), until a new measurement and assessment were made, and a higher rate established as the result."

The arguments contained in the above extract amount to these:—

1. According to the ordinary rule of construction, the enactment of special provisions, exempting certain classes

of tenures from enhancement under certain circumstances, supposes the existence of a rule of enhancement applicable to tenures generally.

2. Proprietors were declared entitled to let their remaining lands under the prescribed restrictions in whatever manner they might think proper, and this "letting" included "letting" to ryots.

3. Under clause 2 of section 60 of Regulation VIII. of 1793, proprietors were entitled to revise, from time to time, the rent rates of a pergunnah after a general measurement of it, so as to "bring those rates into accord with the value for the time being of the zemindar's share of the produce", or in other words, the nirkbundy of the pergunnah was the nirkbundy prepared by the proprietor at certain intervals.

As regards the first of the above propositions, no advocate of ryotee rights ever urged that the Legislature meant there should be no enhancement of rents. A ryot might cultivate more lands or he might cultivate more valuable crops and thus render himself liable to pay more rents. "The rents of an estate," says Lord Cornwallis, "can only be raised by inducing the ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste land, which are to be found in almost every zemindary in Bengal." Further there was nothing in the Regulations to prevent a ryot from engaging to pay higher rates of rents than were prevailing in the pergunnah if he liked to do so, but a zemindar was not legally empowered to demand higher rates.

With reference to Dr. Field's second contention, we have already shown that his interpretations of the terms "let" and "prescribed restrictions," as used in section 52, are not consistent with the reading of the Regula-

tions. But granting that Dr. Field's construction is correct, we do not find anything in the following sections which would support the view that the zemindars were empowered to fix *rates* other than those that were then existing in the pergunnahs. On the contrary we find express provisions in section 57 for the regulation of rents according to "rule or custom." What the rule or custom was, we have nothing to do with while discussing the present argument. All we have to do now is to take note of the circumstance that the Zemindar was bound by "the established rule and custom" then prevailing.

Dr. Field deduces from clause 2 of section 60, the inference that the Zemindar was entitled to revise the pergunnah rates from time to time after a general measurement of the pergunnah. We cannot pretend to be able to construe a sentence in English, better than Dr. Field, but it seems to us that in his eagerness for maintaining a favourite theory of his, he has missed the meanings of the words, "equalizing," "correcting" and "assessment." If the purpose of the general measurement was to revise the rates so "as to bring them into accord with the value for the time being of the Zemindar's share of the produce," the above terms would not have been used. If our readers will carefully go over sections 54 to 59, they will see why the expression, "equalizing and correcting the assesment," was used. These sections, they will find, contain rules (1) for the consolidation of the *asal* rent and the *abwab*, within specified times; (2) for the regulation of rents according to established rule or custom; (3) and for the grant of pattahs after the rents were ascertained and settled. These provisions applying to ryots *holdidg without pattahs*, it was necessary to lay down rules which would apply to ryots *who already held pattahs*. These

rules are contained in section 60. It lays down that in the course of the general settlement with ryots, which would follow the Permanent Settlement with the Zemindars, the ryots *holding pattahs* were not to be interfered with (*a*) unless it was proved that (1) Khoodkasht ryots had obtained pattahs by collusion, (2) or that the rents paid by them within the last three years had been reduced below the rate of the nirkbundy of the pergunnah; (3) or that they had obtained collusive deductions; or (*b*) unless a general measurement of the pergunnah for the purpose of *equalizing and correcting the assessment* took place. Now the object of inserting this last proviso was clearly this. A permanent settlement had been made by Government with the Zemindar on an annual revenue, which may have exceeded the revenue paid at the time when the pattahs, were granted. As, in case the Zemindar had no power to interfere with these pattahs, he might have found it difficult to pay the revenue permanently fixed by Government, the Legislature gave him the power to revise the rents of these ryots after a general measurement of the pergunnah. If upon a general measurement it was found that a khoodkasht ryot holding under a pattah paid a *proportionately less amount* of rent, for the *quantity of land* held by him, than the other ryots, then, in order, to *equalize* the burden of the public revenue, i.e. the assessment imposed on the pergunnah, the rents of such a khoodkasht ryot might be so revised, that he bore a fair and equitable share of the assessment. This would be *correcting* an error. As has been said by Mr. Mackenzie, this revision was intended "to be done once and for all" in each pergunnah. The error into which Dr. Field has fallen in asserting that "assessment" meant "rents" is also a grievous one. A study of the Regulations will show that nowhere has

this term been used to mean, "rents," but that in all the places in which it occurs it means the "revenue" assessed on an estate.

Two other arguments adduced by Dr. Field in support of the Zemindari view now remain to be noticed. The first argument is this :—

"One of the duties," says he, "imposed on proprietors by Regulation VIII. of 1793 was the maintainance of patwaries. The patwaries in every estate were directed to keep accounts relating to the lands, *produce*, collections, and charges. It may be said that the object of keeping accounts of *produce* was that they might be produced before the Collector to enable him to make the allotment of the public revenue, in the case of sale or division of estates, according to the principles laid down in Regulation I. of 1793, which require the assessment upon each lot to be fixed at an amount which shall bear the same proportion to its *actual produce* as the fixed assessment upon the whole of the lands bears to the whole of the *actual produce*. This was not so, however, for these words 'actual produce' were defined by section 8 of Regulation I. of 1801 to mean the net annual rent (i.e. where rent was payable in money), or other net produce (i.e. where rent was payable in kind) receivable by the proprietor after deducting from the gross rent or other gross produce the expenses of collection and management. Clearly then, so far as concerned those parts of the country where rent was payable in money, there was no use in keeping an account of the produce for the assessment of the revenue; and the natural conclusion is that it was kept for the purpose of assessing the rent." (Landholding and the Relation of Landlord and Tenant p. 551).

"What" we are asked, "could have been the object

of requiring patwaries to keep accounts relating to the land and *produce* if it was not meant to help the zemindar to revise the pergunnah rates?" It is somewhat amusing to find an authority like Dr. Field asking a question such as this. We would refer our readers to section 56 of Regulation VIII. of 1793 which we have already quoted. It will appear from this section that, where it was "the established custom to vary the pattah for lands according to the articles produced thereon," that custom, so long as the proprietors and ryots preferred an adherence to it, was not to be interfered with. Now this varying of pattahs according to *articles of produce* could not take place unless the patwaries kept account of *lands* and *produce*. A careful examination of the question would have convinced Dr. Field that the account of the mere *articles of produce* was not sufficient for the adjustment of rents according to the system of Todar Mal. The *yield* per bigha for each description of crop for each class of land, and the prices ruling at the time the rents were last adjusted, together with the subsequent outturns and prices, were absolutely necessary under the system introduced by Todar Mal. We need hardly state that the patwari accounts did not contain any information on these points.

The last argument of Dr. Field that we propose to notice is contained in the following :—

"The Preamble of Regulation XLIV. of 1793, speaking of arrangements by which lands were let in talook or farm, or for cultivation at a reduced rent for a long term or in perpetuity, says that such engagements would 'be repugnant to the ancient and established usage of the country, according to which the dues of Government from the lands (which consist of a certain proportion of the annual produce of every bigha of land, demandable

according to the local custom in money or in kind, unless Government has transferred its right to such proportion to individuals for a term or in perpetuity or fixed the public demand upon the whole estate of a proprietor of land, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, so long as he continues to discharge the latter), are unalienable without its express sanction," (Digest, p. 202).

"From these words (the words of The Preamble of Regulation XLIV. of 1793) it is clear that, according to the understanding and intention of those who framed the Code of 1793, Government was entitled to a *certain proportion of the annual produce of every bigha of land* included in a proprietor's estate, that by the Permanent Settlement Government *fixed the public demand upon the whole estate,* and left the proprietor *to appropriate to his own use the difference between the value of such proportion of the produce* and the sum payable to the public. Now, it is evident beyond controversy that the value of the certain proportion of the annual produce to which Government was entitled was never fixed, was an unknown and indefinite, an unsettled and variable quantity. Since then this quantity was indefinite, and the public demand was fixed and definite, the difference between the indefinite quantity and the definite demand must have been indefinite, and the authors of the Permanent Settlement must have known this—must have known that what the proprietors were left to appropriate to their own use, was indefinite, variable, subject to increase and decrease. It will probably appear to persons of ordinary intelligence impossible to argue in the face of this consideration, that the authors of the Permanent Settlement intended to fix,

or could have thought that they were fixing, the demand upon the cultivator, the rents of the ryots." (Landholding, and the Relatian of Landlord and Tenant. pp. 542-43).

Dr. Field infers from his reading of the Preamble of Regulation XLIV. of 1793 that, "the value of the certain proportion of the annual produce to which Government was entitled was never fixed," and that the authors of the Permanent Settlement knowing this left the proprietors to appropriate "to their own use, what was indefinite, variable, subject to increase and decrease." Now a study of the body of the Regulation from the Preamble of which the above inference is drawn, will show that nothing was farther from the intention of the authors of the Permanent Settlement than what is alleged by Dr. Field. The object of the declaration, contained in the above extract from the Preamble, was to *justify* the provisions laid down in the Regulation for cancelling pattahs granted at *lower than the pergunnah rates, which were believed to represent the money value of the Government share of the produce.* It was as impossible for the legislators of 1793 to determine the shares for the different kinds of lands, for different articles of produce fixed in 1582 by Rajah Todar Mal, as it is impossible for the legislators of 1883 to determine. The pergunnah rates plus the abwabs which prevailed at the time of the Permanent Settlement were, therefore, accepted as the rates which represented the money value of the Government share of the produce. These were the rates to which the Zemindars were legally entitled and, agreeably to this, we find provisions made for the protection of the ryots against the Zemindar's demands for higher rates in the following sections of Regulation IV. of 1794.

"Section 6. The approbation of the collector required

to be obtained to pattahs by section 58, Regulation VII. 1793, is to be considered to extend to the form only. If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand pattahs, regarding the the rates of the pattahs (whether the rent be payable in money or kind), it shall be determined in the Dewanny Adawlut of the Zillah in which the lands may bs situated, *according to the rates established in the pergunnah*, for lands of the same description and quallity as those respecting which the dispute may arise."

"Section 7. The rules in the preceding section are to be considered applicable *not only to the pattahs which the ryots are entitled to demand in the first instance*, under Regulation VIII. 1793, but *also to the renewal of pattahs which may expire or become cancelled* under Regulation XLIV, 1793. And to remove all doubt regarding the rates at which the Ryots shall be entitled to have such pattahs renewed, it is declared, that no proprietor or farmer of land, or any other person, shall require ryots whose pattahs may expire or become cancelled under the last mentioned Regulation, to take out new pattahs at *higher rates* than *the established rates of the pergunnah* for lands of the same quality and description, but that ryots shall be *entitled to have such pattahs renewed at the established rates*, upon making application for the purpose to the person by whom their pattahs are to be granted, in the same manner as they are entitled to demand pattahs in the first instance by Regulation VIII, 1793."

If, now, our readers, will turn to the extracts given, at the commencement of this part of the discussion, from Sir John Shore's Minute, they will find further corroboration of our views. Government in the first instance left the Zemindars and ryots to settle amicably

among themselves, but, when it was found that they could not agree, the dispute was decided by the Court of Dewany Adawlut "according to the rates established in the pergunnah." These rates could not have been the rates established by the authority of the zemindar, for then there would hardly remain anything for the court to decide when the Zemindar went, through the formality of a measurement and assesment. But they must have been the rates prevailing in the pergunnah at the time of the Permanent Settlement. "Such pergunnah rates," we read in Dr. Field's Digest; "as were in existence at the time of the Permanent Settlement were doubtless prepared for the Govesnment officers, who were charged with the duty of collecting the data for the Decinnial Settlement." Need we then wonder why the rates then existing were considered as the "established rates?" The authors of the Permanent Settlement evidently considered that there could be no disputes about the pergunnah rates then prevailing, but it was soon found that such disputes would arise.

That Dr. Field's theory with reference to the revision of Pergunnah rates cannot be correct may surely be inferred from the fact that there is no distinct mention of such an important process in the Regulations themselves, that it is never once described or referred to in the Revenue Records before or after the Settlement and that no one in Bengal had even heard of it until Dr. Field disclosed it to the members of the Rent Commissiou in 1879.

THE ZEMINDARI VIEW OF THE PERMANENT SETTLEMENT.

We have hitherto dealt with the arguments advanced by Dr. Field in support of the rights claimed by the zemindars, uuder the Permanent Settlement. But as the zemindars themselves have lately, in their petition to Government, stated what they consider to be their rights under that settlement, we shall take leave of the advocate and address ourselves to the principal. That our readers may decide how far our criticism on the zemindars' case as put down by themselves, is reasonable and correct we shall first lay before them the following

extracts from the memorial of the British Indian Association dated the 3rd October 1883.

"9. That as great stress was laid upon the Permanent Settlement Regulations in course of the debate upon the Bill, and as the primary object of the Bill was described to be to restore the *statu quo ante*, your Memorialists venture to draw attention to the following propositions affirmed by those Regulations :

PROPRIETARY RIGHT.

"(*a*) The Settlement is made with the zemindars and independent talookdars 'as actual proprietors of the soil.' Regulation I of 1793.

"(*b*) 'The property in the soil has been declared to be vested in the landlords.' Preamble to Regulation II of 1793.

"(*c*) The zemindar was declared entitled to *milikana* (*malik*—owner) allowance from Government in case the land was held khas, or let in farm on refusal of the proprietor to accept the temporary settlement (Section 11 Regulation I, and Section 44, Regulation VIII of 1793) The admission of the right of malikana is a proof sufficient of the pre-existing proprietary right of the zemindar.

TENURES AND ASSESSMENT OF RENT.

"The protected tenures recognized in the Regulations were as follows :—

(*a*) Dependent Talooks such as are described in Sec. 48, Reg. VIII of 1793.

(*b*) Istemraree and Mocurraree tenures held for 12 years prior to the decennial settlement, such as are described in Sec. 49, Reg. VIII of 1793.

"Besides these protected tenures the zemindar or other actual proprietor of land was declared entitled 'to let the remaining lands of his estate in whatever manner

he may think proper,' subject only to certain specified restrictions, Sec. Reg. VIII of 1793, namely :

(*a.*) That a farmer shall have no authority to collect rents unless he is armed with an amulnamah from the proprietor.

(*b.*) That all cesses shall be consolidated with the rent.

(*c.*) That no new cesses shall be imposed.

(*d.*) That the pattah shall be varied if the species of produce be changed.

(*e.*) That the exact rent or rate of rent shall be stated in the pattah.

(*f.*) That the forms of pattahs shall be registered in the Zillah Court.

(*g.*) That pattahs shall be granted when demanded.

(*h.*) That existing leases shall be maintained till their term expire, and that as regards khudkasht royts their pattahs shall not be cancelled unless their rent has been reduced within the last three years below the Pergunnah rate or unless the Pergunnah rate itself is changed.

"As regards lands which were waste, at the time of the Permanent Settlement, the zemindars had absolute discretion in the Settlement of the same. This is emphatically acknowledged in Section 31 of Regulation II of 1819: "Nothing in the present Regulation shall be considered to affect the right of the proprietors of the estates, for which a Permanent Settlement has been concluded, to *the full benefit of all waste lands included within the ascertained boundaries of such estates* respectively at the period of the Decennial Settlement and which have since been or may hereafter be reduced to cultivation. The exclusive advantages resulting from the improvement of all such lands were guaranteed to the proprietors by the condition of that Settlement.

"The Pergunnah rate was declared to be the ordinary standard of assessment, but the Pergunnah rate being found to be uncertain the zemindars were empowered to grant pattahs and make collections 'according to the rate payable for land of a similar description in the places adjacent' not exceeding the highest rate paid within last three years where no established Pergunnah rates could be found. (Sections 5 to 7, Regulation V of 1812).

"The right of the zemindar to enhance rent was recognized when the Permanent Settlement was made. Thus in the preamble to Regulation XLIV of 1793: Again: 'It is . . . . essential that the proprietors of land should have discretionary power to fix the revenue payable by their dependent talookdars, and to grant lease or fix the rent of the lands for a term sufficient to induce their dependent talookdars, under-farmers, and ryots to extend and improve the cultivation of their lands.'

REALIZATION OF RENT.

"1. The zemindars were empowered to realize rent (arrears above Rs. 500) from under-tenants and dependent talookdars by summary arrest and summary sale of the under-tenures. (Sec. 9 &c Reg. XXXV of 1795 and Secs. 14 & 15, Reg. VII of 1799).

"2. The zemindars were invested with the power of distraint of not only the produce of the land but of all personal property and cattle of the defaulting ryot. (Sec 2, Reg. XVII of 1793).

POWER OF EJECTMENT.

"The zemindar was invested with the power of ejecting all ryots khudkast or paikasht, having a right of occupancy or not, but not having 'right of property or transferable possession' for arrears of rent even without recourse to law, clause 7, Sec. 15, Reg. VII of 1799. This clause among other things provides—'or if the

defaulter be a lease-holder or other tenant, having a right of occupancy only so long as a certain rent, or a rent determinable on certain principles according to local rates and usages, be paid without *any right of property or transferable possession* the proprietor of whom such tenures is held, or the farmer or other person to whom such proprietor may have leased, or committed his rights must be understood *to have the right of ousting the defaulting tenant from the tenure he has forfeited by a breach of the conditions of it.*'

"10. That it will be seen from the above that under the Permanent Settlement Regulations no class of ryots except the khudkasht kadimi ryots, that is to say, resident hereditary ryots, had the right of occupancy, that the determination of rent was originally according to the Pergunnah rate, but that the Pergunnah rate being uncertain it was perfectly left to the discretion of the zemindar and the ryot, and it was regulated either by custom or competition. That summary powers had existed for the realization of rent, and that eviction was broadly recognised for non-payment of rent. That no embargo was laid upon the conversion of khamar into ryoti land and *vice versa*, that the twelve years' rule of occupancy was not known, that no settled ryot of the description recognized in the Bengal Tenancy Bill was then in existence, and that no such provisions as compensation for disturbance were then thought of."

If the reader will now turn to our examination of Dr. Field's views regarding zemindari rights under the Permanent Settlement, he will find our replies to most of the prop sitions affirmed by the British Indian Association. We have explained the meanings of the terms, "actual proprietor," "letting the remaining lands" and revision of the Pergunnah rate," used in the Perma-

nent Settlement Regulation. We have also discussed the zemindar's power to alter the Pergunnah rate. But there are certain *omissions* and *misrepresentations*, in the zemindars' petition which deserve notice.

Referring to the head, "Tenures and assessment of Rent," we find that the zemindars have omitted to mention that, under sections 56 and 57 of Regulation VIII of 1793, the rent demandable from a ryot was to be regulated by the *established rule or custom.* That there prevailed such established rules and customs in the different parts of Bengal at the time of the Permanent Settlement is conclusively proved by the extracts we have made from the concluding portion of Sir John Shore's Minute. (pp. 82-86). Fairness would have required that the zemindars should have, in their list of propositions affirmed by the Permanent Settlement, included also those that were intended for the benefit of the ryots.

Again, by affirming that the Pergunnah rate could be changed, the zemindars have made a statement, that is not borne out by any reading of the Regulation. It is true that under section 60 of Regulation VIII of 1793 the pattah of the *khoodkasht* ryot could be changed "upon a general measurement of the pergunnah for the purpose of equalizing and correcting the assessment." But as we have already explained, this was quite *different from affirming that the Pergunnah rate could be changed.*

The Association have, it seems to us, greatly weakened their cause, by calling to their aid, Regulations passed subsequent to the Permanent Settlement. Any rights conferred on the zemindars by later Regulations were *evidently rights not conferred by the Permanent Settlement.* The main question, under discussion, is not, however, at all affected by the Regulations quoted by the zemin-

dars. To prove that they had absolute discretion in the settlement of lands, lying waste at the Permanent Settlement, the zemindars have quoted section 31 of Regulation II of 1819, which provides that the full benefit arising from the cultivation of all waste lands included within the ascertained boundaries of estates permanently settled will belong to them. But as we shall presently show the zemindars have missed the correct meaning of this section.

The object with which Regulation II of 1819 was passed is stated in the Preamble to be " to declare generally the right of Government to assess all lands, which at the period of the Decennial Settlement were not included within the limit of an estate for which a settlement was concluded, with the owners, not being lands for which a distinct settlement may have been made since the above period, nor lands held free of assessment under a valid and legal title ; and at the same time formally to *renounce all claim on the part of Government to additional revenue from lands which were included within the limits of estates for which a Permanent Settlement has been concluded*, at the period when such settlement was concluded, whether on the plea of error or fraud or on any pretext whatever, saving of course mehals expressly excluded from the operation of the settlement".

If the zemindars or their legal advisers had carefully studied Regulation II of 1819, they would have seen that the first 30 Sections of it contained rules for the resumption of lands not included in the Permanent Settlement of estates (this was the first object declared in the Preamble), and that Section 31, quoted by them formally *renounced all claim on the part of Government to additional revenue from lands which were included*

within the limits of estates for which a Permanent Settlement had been concluded, (being the second object of the Regulation).

In their petition to Parliament the zemindars have argued on the meaning of Section 31 of Regulation II, of 1819, in the following manner :—

" Mr. Ilbert says :—' We have indeed been told that it was part of the bargain between the Government and the zemindars that the latter should not only be exempted from payment of revenue for lands which were then waste, but which might subsequently be taken into cultivation, but should be given full and absolute discretionary power as to the mode of dealing with such lands, unqualified by any village custom or local usage. But it would require extremely strong and clear words to make an enactment conferring such powers.'

" The following, however, appears in Section 31 of Regulation II of 1819 :—

' Nothing in the present Regulation shall be considered to affect the right of the proprietors of estates for which a permanent settlement has been concluded to *the full benefit of all waste land* included within the ascertained boundaries of such estates respectively at the period of the decennial settlements, (and which have since been or may hereafter be, reduced to cultivation.) *The exclusive advantages* resulting from the improvement of all such lands were *guaranteed* to the proprietors by the conditions of that settlement'.

" Whether or not these words ' are strong and clear,' the only ' guarantee' now left to the landlords of Bengal is reliance on the high sense of justice of the British Parliament. For all but the last three lines of the above were cited in Council and found to fail."

The zemindars have relied " on the high sense of

justice of the British Parliament" for the meaning of the "strong and clear words" used in section 31 of Regulation II of 1819 and so also rely the ryots of Bengal. The ryots implore the Hon'ble members of that august assembly to consider whether or not by the "strong and clear words" used in that section Government *simply renounced its claim to assess revenue* on such waste lands as were subsequently brought under cultivation and left the customary *rights of the ryots* same as before. It will be seen that the *zemindars' claims to waste lands, as opposed to those of the ryots,* are solely based on the interpretation put by them on this section and on similar sections of other Resumption Laws, and if, as we have shown, the provisions do not apply to the ryots, this portion of the zemindars' case totally falls to the ground.

Further, the zemindars have, from Regulation XLIV of 1793 and Regulation V of 1812, inferred their right to enhance rents. We have already shown that what Regulation XLIV of 1793 provided was to empower auction-purchasers to enhance rents *up to*, and *not beyond*, the pergunnah rate. The object of it was to secure the Government revenue from any possible loss owing to the former proprietors having fraudulently granted pattahs below the pergunnah rate and then allowed the mehal to be sold for arrears of revenue. As the value of estates could thus be reduced by dishonest zemindars, the legislature very properly provided that the auction-purchaser at a sale for arrears of revenue was entitled to cancel pattahs granted by his predecessor at lower than the pergunnah rate. This power, which was withheld from all other purchasers by public or private sale (vide section 4), was, we need hardly state, quite different from the power to *change the Pergunnah rate.*

We next come to the consideration of the powers given to the zemindars by sections 5 to 7 of Regulation V of 1812, quoted by them. A reference to section 5 will show that it simply declares that, there being reason to believe that the Pergunnah rates, according to which auction-purchasers, at sales for arrears of revenue, were empowered, under previous Regulations, to collect rents "are in many instances become uncertain the following rules shall be observed on all occasions of that nature." These rules are contained in sections 6 and 7, quoted below :—

"Section 6. If any known established pergunnah rates shall exist, the same shall serve to determine the amount of the rent which should be received by persons deputed to attach the lands on *the part of Government*, or *by the purchasers* at the public sales."

"Section 7. In cases in which no established rates of the pergunnah or local division of the country may be known, pattahs shall be granted, and the collections made, according to the rate payable for land of a similar description in the places adjacent; but if the leases and pattahs of the tenants of an estate generally, which may consist of an entire village or other local division, be liable to be cancelled under the rules above noticed, new pattahs shall be granted, and the collections made *at rates not exceeding the highest rate* paid for the same land in any one year within the period of the three last years antecedent to the period at which the leases may be cancelled."

It will be seen that, where the Pergunnah rates existed they determined the amount to be collected by Government officers or purchasers. It was only in those places, where the pergunnah rates did not exist, that the collections were to be made "according to the rate payable

for land of a similar description in the places adjacent," and when new pattahs were to be granted the rates were not to exceed "the highest rate paid for the same land in any one year within the period of the preceding three years." These new provisions were evidently intended to provide for cases in which from want of the pergunnah rate the new purchaser did not know how to collect rents. But, that he might not collect rents at a rate higher than what prevailed in the neighbourhood it was provided that the new rate was "not to exceed the highest rate paid for the same land in any one year of the preceding three years." Surely, the above provisions cannot apply in the present case in which the question for decision is the *general power* of the zemindar to *enhance rents*.

Regarding the powers enumerated by the Association under the heads, "Realization of Rent" and "Power of Ejectment," we admit that the zemindars enjoyed them. But it will be seen that, with the exception of Regulation XVII of 1793 *all the Regulations quoted by the zemindars are of subsequent dates. They can no more be called parts of the Permanent Settlement Code than other Regulations and Acts dealing between zemindars and ryots.* To any one studying the immediate effects of the Permanent Settlement it will not appear strange that such powers were given to zemindars. The authors of the Permanent Settlement believed that, by fixing for ever the public assessment upon the lands, they were inaugurating a measure which would "promote the future ease and happiness of the people"; and though Bengal Proper, no doubt, owes her present prosperity chiefly to this settlement, its immediate effects were oppressive both to landlords and tenants. As might be expected from the revenue having been fixed for ever

the first blow fell on the zemindars. It was notified to them in clause 3, section 7 of Regulation I of 1793, "that in future, no claims or applications for suspensions or remissions, on account of drought, inundation, or other calamity of season, will be attended to, but that in the event of any zemindar, independent talookdar or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded or his or her heirs or successors failing in the punctual discharge of the public revenue which has been or may be assessed upon their lands under the above mentioned Regulations, a *sale of the whole of the lands of the defaulter, or such portion of them, as may be sufficient to make good the arrears, will positively and invariably take place.*"

The country was quite unprepared for such a rigid Sale Law and the effect of it is thus described by the Board of Revenue in their "Memorandum on the Revenue Administration of the Lower Provinces of Bengal, 1873."

"The zemindars with whom the settlement was originally made were for the most part powerful chiefs, whose authority extended over wide tracts of country. Of these tracts they were by the settlement constituted the proprietors. But under the influence of the Regulations of 1793 these large zemindaries were speedily broken up. The Government demand was the one fixed link in the chain of the administration, and the first unbending fixture that the people of the country ever had to deal with. The zemindars had no power to invest their demands upon their tenantry with the same rigid character, and the result was wide-spread default in the payment of the Government dues, and extensive consequent sales of estates, or parts of estates, for recovery of arrears. In 1796-97 lands bearing a total sudder jumma of sicca

Rs. 14,18,756 were sold for arrears of revenue, and in 1797-98 the jumma of lands so sold amounted to sicca Rs. 22,74,076. By the end of the century the greater portions of the estates of the Nuddea, Rajshahye, Bishenpore, and Dinagepore Rajahs had been alienated. The Burdwan estate was seriously crippled, and the Beerbhoom zemindari was completely ruined. A host of smaller zemindars shared the same fate. In fact it is scarcely too much to say that, within the ten years that immediately followed the permanent settlement, a complete revolution took place in the constitution and ownership of the estates which formed the subject of that Settlement. The total average collections from 1794 to 1798 amounted, however, to sicca Rs. 2,65,00,000, being only three lakhs short of the annual demand, showing how effectually the main object in view was obtained at the expense of so much individual suffering."

The main object that the settlement had in view, namely, the prompt realization of revenue, was thus effectually "obtained at the expense of much individual suffering." But, hitherto it had been the zemindar who had suffered most, in 1799, his sufferings were transferred to the ryot. "A great financial improvement," continue the Board, "was effected by the legislation of 1799. The zemindars being vested with increased power over their tenants began to collect their rents with greater ease and success, and the result was of course that the Government dues were paid up with greater regularity." The improvement, of which the Board speak with so much complacency, consisted in giving the zemindar power not only over the property, but the person of the ryot. The same spirit which induced Government to pass Regulation VII of 1799, commonly called the *Huftum*, also induced it to pass Regulation V of 1812,

known as the *Punjum*. The miseries which the ryots suffered under these Regulations were indeed very great. But whatever justification the Government may have had in strengthening the hands of the zemindar at a time when there hardly existed any courts of justice in the mofussil, to aid him in the speedy realization of rents, Regulations *Huftum* and *Punjum*, will always be regarded as blots in its Statute Book.

In concluding this our criticism of the British Indian Association's views regarding the Permanent Settlement, we beg to point out that they have in paragraph 10, of their petition, which purports to be a summing up of the arguments advanced in the preceding paragraph, made two incorrect statements. In the fisrt place paragraph 9 speaks only of the *khoodkasht* or resident ryot, but in para 10, we find the word *kadimi* or hereditary added after *khoodkasht*. Secondly, it is stated in para. 10 that the Permanent Settlement Regulation left the rent to be "regulated by custom or competition." But nowhere in the propositions stated in para. 9, is any mention made of *competition*. These and the other circumstances mentioned in the course of this criticism render it necessary that the allegations of the Association should be carefully weighed before they are accepted as correct.

In their petition to Parliament the zemindars have justly expressed their mortification at the expressions used by the Hon'ble Mr. Ilbert with reference to the documents regarding the Permanent Settlement. If the Law Member had no time "to enter into any minute or exhaustive inquiry into the meaning and effect of the numerous documents, which, together made up what is known as the Permanent Settlement," he should not, in our humble opinion, have attempted to discuss the

meaning of that settlement—As it is, though his remarks on the general nature of the Permanent Settlement are the same as those made by the Hon'ble Mr. Evans, he has given the zemindars a handle for questioning the fairness and justice thereof. We are afraid Mr. Ilbert was led to adopt this course by Dr. Field, who at page 163 of the "Digest," refuses "to consider the state of things before the Permanent Settlement." The rights that belonged to the ryots in ancient times had in his opinion "a mere shadowy existence in a state of society where there was no systematic legislation, no regular courts of justice, and which, therefore, were not capable of enforcement by legal sanction." We have, however, with our poor abilities, shown, at the commencement of the present discussion, that the rights of the *ryots previous to the Permanent Settlement were of a substantial nature.* As regards courts of justice, the *kazees*, who presided over them under the Mogul, continued to preside, also, for a long time after the Government passed into the hands of the English.

THE NECESSITY FOR A GENERAL REVISION OF THE RENT-LAW.

"The first question," said the Hon'ble Mr. Ilbert, while introducing the Bengal Tenancy Bill, "with which I have to deal is whether any necessity exists at all for undertaking a general revision of the rent-law? Mr. Ilbert proceeds:—

"What then are the facts with which we have to deal, and what are the evils for which legislation is required? Broadly stated, they are these. We have a population of some sixty millions, mainly deriving their means of subsistence, directly or indirectly, from the soil, the

great majority, directly, as cultivators; a small minority indirectly, as rent-receivers. The mutual rights of these two classes, the rent-recievers and the cultivators, are uncertain and obscure, the machinery for ascertaining and enforcing those rights is insufficient and defective; and the result is friction, which has taken different forms in different parts of the province. In Behar, where the landlords are strong and the tenants are weak, we have rack-renting and acts of lawless and high-handed oppression on the parts of the landlords: in Eastern Bengal, where, comparatively speaking, the landlords are weak and the tenants strong, we have combinations of the tenants to resist the payment of rent. This is what Sir Ashley Eden said a few years ago of Behar, in a letter which he wrote as Lieutenant-Governor, pointing out the urgent necessity for some reform in the law:—

'In Behar what is most wanted is some ready means of enabling the ryot to resist illegal distraint, illegal enhancement, illegal cesses and to prove and maintain his occupancy rights. Apart from the backwardness and poverty of the ryot, there are many points in the existing system of zemindari management in Behar which seem to call for speedy amendment. The loose system of zemindari accounts, the entire absence of leases and counterparts, the universal prevalence of illegal distraint, the oppression incident to the realisation of rents in kind, the practice of amalgamating holdings so as to destroy evidence of continuous holding, are evils which necessarily prevent any possible development of agricultural prosperity among the tenant class, and place them practically at the mercy of their landlords or of the *Thikadars* (or lessees) to whom ordinarily their landlords from time to time transfer their rights.'

"And here is a picture, drawn about the sametime, of the way in which the law was working, or failing to work, in other parts of the province:—

'It is to be borne in mind (I am quoting from the Bengal Administration Report of 1875-76), that the last Rent Act for

Bengal (VIII of 1869) clearly lays down the conditions under which alone the rent of an occupancy ryot can be enhanced. But it does no more than this. It does not prescribe any rule, nor even any principle, upon which the enhancement is to be determined. The consequence is that whenever a dispute arises the parties cannot form any idea as to how it will be decided. The courts do not, indeed cannot, know how to decide ; and the end is that no real decision can be attained. It follows, then, that no enhancement is lawfully adjudged, and consequently the landlord is strongly tempted to obtain by illegal means what he regards as his due. This again produces resistance on the part of the ryot ; and if many ryots are implicated, then some union or other combination is formed, which ends in a general withholding of rents by the tenantry, and an attempt at forcible exaction of it by the landlord,—in all which there lie the germs of agrarian disturbance.'

"Rack-renting here, land-leagues there. We have, indeed, in the existing state of things all the elements of agrarian disturbance."

The following extracts from Despatch No. 6, dated the 21st March 1882 from the Viceroy to the Secretary of State contain a detailed statement of the reasons which have induced Government to undertake a general revision of the Rent-Law.

"24 In the autumn of 1875 apprehensions were entertained that scarcity might again occur in northern Behar, and two officers, Messrs. Geddes and McDonnell, were deputed to report upon the condition and prospects of the country. Some very grave statements, which have been made by Mr. Metcalfe, officiating Commissioner of the Patna Division, in December of that year, were specially commended to their attention. Mr. Metcalfe had said, 'in the present year there are excellent crops in some places and none at all in others. Within seventeen years there have

Causes of poverty in Behar. Mr. Metcalfe's opinion.

been five similar years, in each of which a certain part of the population has died of starvation.' After enumerating what were, in his opinion, the causes of this state of things, he continued: 'Not only, therefore, is the cultivator left with an area barely sufficient to raise the food he requires for his family, but in times of drought, having no margin of cultivation left, he is short of food, as the yield is below his requirements.'

Messrs. Geddes and McDonnel reported in January 1876. 'How comes it,' they asked.

'That, with the present, not very grave, vicissitude of season the Imperial Government should be expected to interpose in regard to a most fertile region the great bulk of whose agricultural profits go elsewhere than through the Imperial Exchequer? How comes it that Behar, with an industrious population, the most fertile soil in India, a territory comparatively very lightly assessed in land-tax—how comes it that this Behar should be seeking imperial relief oftener and more extensively than the regions less fertile and far less (sic) heavily assessed by Government?' 'The explanation,' they went on to say, 'as to why the three northern sub-divisions should not tide over the vicissitude by falling back on food reserves, or on money resource, summarises itself briefly thus. The whole conditions of agricultural industry there are such as to render it precarious. There is no sufficient certainty as to tenure. It is impossible for the population to fall back this year solely on acummulating reserves, whether of grain, of property, of money, or of credit. For the whole conditions of life, as will be seen from the Collectors reports, are such as to preclude any sufficient accumulation of the kind. The ryots cannot fall back on any credit-fund like the tenant right of other parts of Bengal, for practically there is no such right available to offer in pledge. The people who plough and sow, and who ought to reap, have not a reasonable assurance as to the fruits of their industry.'

"Reference was made to the unsatisfactory character of rent-suits in Behar, and to the *thikadari* or assignment system, consisting in the sale and purchase of the

Opinion of Messrs. Geddes and Mac Donnell.

control which the Zemindar is able to exercise over the ryot, including therein almost unlimited powers of distraint, enhancement and ejectment. The report also alluded to the element of compulsion in, and other abuses connected with, the cultivation of indigo. One experienced officer, it was said, had estimated that indigo occupied 200,000 acres of the very best soil in the Patna Division. There was some ground to suppose that in Muzaffarpur and the northern Sub-Division of the Bhagulpur District, one-third of the culturable area was under *thika* assignment to Europeans. The practice of illegal distraint, or of sending out a peon (messenger) to prevent the reaping of the crop as a means of pressure in order to enforce compliance, whether with legitimate demands or exactions, was very fully described; and the points where violations of the law habitually occurred were specified with precision. Messrs. Geddes and MacDonnell, however, did not recommend special legislation, though it had been suggested by some of the local officers."

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"28. . . . . A letter of Sir S. C. Bayley (then Commissioner of Patna), dated the 3rd March 1877, was forwarded, (by Sir Ashley Eden) which showed that in five months no less than 142 cases connected with indigo disputes, most of them, indeed, trivial, but some of a very serious kind, had come before the criminal courts. The general conclusion of the Lieutenant-Governor was that the system, as it existed, involved an amount of lawlessness and oppression, principally in the shape of illegal seizure and retention of land, and to a minor degree in the shape of extorted agreements to cultivate and of seizure of

ploughs and cattle which he was not prepared to tolerate. A mass of detailed proceedings was laid before the Government of India, and two cases were referred to as illustrating the absolutely arbitrary and illegal way in which planters considered themselves entitled to dispossess ryots of their land. 'One of these cases led to an attempt on the part of the ryot to commit suicide; in the other, to his actually committing it. In neither case did the ryot see any hope of redress or think of applying to the courts; and though both cases were judicially investigated, yet in neither was any punishment inflicted on the factory people.'"

. . . . . .

"32. The evidence before us of the depressed and precarious position of the tenantry in that part of India (Behar) is full and conclusive. It would be altogether a mistake to suppose that the unfortunate state of things which there exists is mainly, or even very largely, due to indigo planting. The facts connected with the cultivation of indigo, which were brought to notice some years ago, testify, indeed, to the possibility of serious oppression and strikingly exhibit the manner in which persons exercising the authority of landlords could trample upon the rights of defenceless peasants. But these facts, taken by themselves, merely illustrate abuses of proprietary power which are ripe throughout Behar. The area under indigo cultivation is an insignificant fraction out of the 23,670 square miles which constitute the Patna Division. It is manifest that the majority of the ryots in the whole of that large tract of country are rack-rented. The ryots of the Shahabad District appear to be better off than others; but for a general view we would refer Your Lordship to the Note

Causes of depressed condition of Behar.

drawn up by Mr. Reynolds on the 11th December 1880, after a visit to Bankipur, during which he had conferred with experienced officers. It was urged upon him that the great evil, which calls for remedy in Behar, is the arbitrary enhancement of rent at the will of the landlord. The Collector of Patna reports that the mass of the tenantry are now paying rents which have doubled within the last 16 years. The Covenanted Deputy Collector of Gya (Mr. Finucane) calculates that the rental of the different districts is at present from twice to four times the amount paid at the time of Permanent Settlement. Mr. Reynolds shows from the road-cess returns that the incidence of rent is higher in the Patna District than in any other district of Bengal; higher in Darbhanga and Saran than in any other districts except Hooghly and Burdwan; and higher in Gya, Shahabad, and Muzaffarpur than in any other districts except the above and five more, of which two, Rajshaye and the 24-Purgunnahs, pay the some average rental as Gya, and one, Rangpur, pays the same average rental as Shahabad. The only district of the Patna Division, where the average rental does not appear to be unusually high, is Champaran of which the circumstances are exceptional, as the proportion of waste land is very large.

"33. Without entering upon any detail in support of our opinion that the Behar ryot is poor and oppressed, we will cite briefly a few descriptions of prevailing circumstances or practices given by zamindars or planters themselves. Major Hidayat Ali, an important landholder in Behar, writes on 20th September 1877: 'The ryots of this province, viz, the heads of families, and even the women and the male adult children of the agricultural classes, though they

State of the case as described by certain zamindars and planters.

labour hard, are yet in a state of almost utter destitution, and that owing to the heavy assessments laid on them.' His opinion is characterised by Colonel Emerson, the Cantonment Magistrate of Dinapore, as unprejudiced and valuable. Mr. Worsley, Collector of Muzaffarpore, reports on 9th October 1877:

'That illegal distraint was universally practised in this district I well knew; but I had not expected to receive the following naive confession from all the principal Zamindars of Hajipore sub-division. "The zemindars confess that they resort to private distraint in preference to distraint through the Court, the latter involving expense which has to come on the ryot, and diminishing his means of paying his legitimate dues, as well as of leaving a sufficient balance for his own support."'

"Mr. Minden Wilson, one of the oldest planters in the Muzaffarpore District, in the course of a deposition before a civil court taken in May 1876 stated as follows:

'I can define what is called factory influence. The factory influence is generally represented by a *peon* with a stick. I think that gives the idea of the influence. I do not think the factory influence extends beyond that. It is all due to coercion. The factory has no legal influence independently of contracts or agreements. I did depose previously that planters had not moral influence in their *dehats* (circles of villages.) I swear again as it is my opinion that a manager has no moral influence in his *dehat*. The planters are supposed to place themselves in the place of zemindars from whom they take leases. They do partly—some *thikadars* more and some less; it depends on the capacity of the managers. The amount of influence depends on the capacity of the manager. It is customary that zemindars have a great influence over the ryots. Leases are taken from them for the purpose of exercising that zemindari influence over them to raise indigo. The ryots know that the influence may be exercised against them at any time either for the purpose of raising indigo or for any other purpose. The rent is allowed to recur into arrears, and money permitted to be owed to the factory for the purpose of increasing that influence. It is the rule that

orders from the manager are obeyed by ryots without exercising any influence. The factory influence is mostly due to coercion, and not all due to coercion, as I stated in my examination-in-chief.'

"Mr. Riddell, a proprietor and manager of the Singhai factory, deposed:

'By moral influence, I mean factory influence. I mean that we have a right to have a cart by offering him five annas a day when the man has an offer of twelve annas a day from an outsider, five annas being the usual rate paid in the mofusil. * * * To obtain influence over the ryots we take leases of villages from zemindars. If the ryots on being asked would agree to cultivate indigo, there would be no necessity for taking leases of villages. We lend money, which is technically called *Zarpeshgi*, when we take leases of villages, that is to induce them to grant leases. We shall pay to our lessors a larger jamma than what we collect from the ryots as rent. The object for paying a higher jamma is to obtain influence over the ryots inorder to induce them to cultivate indigo. * * * * By zemindari influence I mean that zemindar takes carts and employs labourers for his own use without paying for them, or paying too little for them; he makes his ryots attend his weddings; he collects the rent from them; he takes *salamies* on various occasions. These are matters of custom. This is a custom which I, as a factory manager or zemindar's lessee, did not adopt.'

"Statements made by the Government Pleader of Gya in or about October 1877 (himself a landholder of the district, and said to be a just man) are to the effect that the zemindars exact from the ryot of Behar numerous and heavy illegal cesses; that the rents of holdings exempt by law from liability to enhancement are raised every year; that ryots are illegally evicted; and that the payment of rent is enforced by duress, the ryot being detained at the zemindar's place of business, or subjected to annoyance by the zemindar's dependants sitting at his door, preventing ingress and egress and access to the village-wells until the demand is satisfied.

"34. These admissions were made four or five years ago. The recent harvests have been good. The planters have formed an Association to repress abuses. A great part of the evils we describe is unquestionably due to defects in administration rather than to defects in the law. Many capable officers have, of late years, been posted to Behar Districts. Sir Ashley Eden has devoted much attention to introducing administrative improvements in Behar. In one or two districts endeavours have been made to familiarise the ryots with the true extent of the zemindars' legal demands upon them, by advising them to take copies of the road cess returns showing the amounts of rent beyond which the zemindar can effect no legal recovery. Nevertheless, bearing in mind the mass of particulars before us, we concur in the view of the Famine Commission that the condition of the Rent Law in Behar is a very grave hindrance to agricultural prosperity; and we observe with concern that Mr. Reynolds, in his Note above referred to and dated only about a year back, sums up his conclusions in these terms:

State of things at present time.

'The Behar ryot of to-day is equally deficient in the knowledge of his rights, and in the spirit which would lead him to assert them. He is at once industrious and unthrifty; for he knows that it is his destiny to labour, and he feels that it would be useless for him to attempt to save. Accustomed to a low standard of living, he has no thought of improving his condition, because, hitherto, the circumstances of his lot have made permanent improvement impossible to him. His best hope has been that the zemindar and the *mahajan* will leave him a bare sufficiency to support life till his next harvest time comes round.

"35. The remark made in the 5th paragraph of this despatch, that, for the last nine or ten years it has been

Reasons for interposition in the Eastern Districts.

practically certain that the whole Bengal Rent Law must, at some-time, be revised, requires some amplification. We have guarded ourselves against the unsound inference that any evils connected with the enforced cultivation of indigo, are the only, or even the chief, wrongs which need remedy in Behar, a province where, we regret to believe, extortionate imposts, wrung from the ryots too often by unlawful means, are general. In regard to Eastern Bengal, it would involve misapprehension to imagine either that serious rent disputes, culminating in turbulence, were a novelty in 1873, or that even at the present time when that part of the country is quiet and prosperous, there is no risk of further agitation or commotion. From time immemorial, the levy of rent has been a matter of contest in different parts of Bengal; nor should it be forgotten that the people in proportion as they gain strength and learn that they possess it, are the more ready to take and press advantage. The comparative weakness of the zemindars in the Eastern Districts is not a reason for refraining from interposition in that portion of the Lower Provinces. If they feel that their traditional power is shaken, they are the less likely to be scrupulous in its tenacious defence. If the ryots perceive that they can sometimes resist even legitimate claims with impunity, there is no probability that they will exercise any generous self-control. Only last summer a fresh application was submitted by the Commissioner of the Rajshahye Division for special police in the Pubna District, the Magistrate having reported that the conditions of the dispute were unchanged, and that if the force were withdrawn, disturbance would again break out."

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"53. In Behar, it is said that not one quarter per cent. of the ryots hold pottahs; and 'an examination of the *jamabundi* papers (rent rolls) of Behar estates has shown that while 60 per cent. of the present ryots have held some land in the villages in which they reside for more than 12 years, less than one per cent. of them hold at present the same area of land which they held 12 years ago. Inasmuch as these ryots hold no *pottahs* or other documents showing which are the particular fields which they have held for more than 12 years, and which fields were subsequently acquired, it is doubtful whether any of them could, under the existing law, prove their occupancy rights even where these rights exist beyond all doubt.' The Collector of Patna reports that whenever the zemindar has felt himself strong enough to break occupancy holdings, he has done so; and that the landlords are very active in shifting the tenants from time to time to prevent the acquisition of occupancy rights. The zamindars of Shahabad, at a meeting held on 30th October 1880 at Arrah, deprecated the concession to resident ryots of rights of occupancy in lands held by them for three years. 'At present,' the zemindars said, 'landowners prevent the growth of occupancy rights by granting leases for five years only, or by changing the lands or by managing so that a ryot shall never hold at the same rent for twelve years. In practice, the last expedient is found sufficient, as the Courts find claims to occupancy rights not proved, unless the ryot can show that he held the same land for twelve years by proving that he paid the same rent. Under the proposed law, the zemindars would not suffer ryots to remain for three years.' 'Interchange of lands,' observes the Officiating Collector of Saran, Mr. McDonnell, 'between

In Behar.

ryots in a zemindari occasionally occurs, but it is the rare exception, not the rule. Manipulation by the *patwris* of the village *jamabundis* to prevent identification of the plot held this year with the same plot held five years ago, is of usual occurrence to prevent proof of continuous holding, and to furnish evidence of the contrary, as well as of a change in the rates.' The Maharaja of Darbhanga informed Mr. Reynolds that his present practice was to give leases for ten years, and if the ryot showed himself a good tenant, to renew his lease, and allow him to acquire a right of occupancy, but that if the term were reduced to three years, he would be obliged to eject all his tenants at the end of two years, so as to bar the acquisition of the right.

"54. In Bengal Proper, the Commissioner of the Chittagong Division states that most landlords have been taking precautions against allowing their ryots to obtain occupancy rights. A petition from the cultivators of the Attia Sub-division of the Mymensingh District alleges that the zemindars are busy sending their dependents and club-men about from village to village to take leases for limited periods from ryots likely to be entitled to rights of occupancy under the provisions of the draft Bill of the Rent Commission. The Collector of Purneah asserts that it is the practice in many districts to take *kabuliyats* from ryots for fixed terms, which are renewed or not at the pleasure of the landlord, and that, in this way, the accrual of the right of occupancy has been prevented The Collector of Dacca reports:—'At present, as long as they (the ryots) pay their rent, they are not in much danger of having their tenancy interfered with, unless the landlord is anxious to prevent their acquiring a right of occupancy.' The Collector of Faridpore has heard

In Bengal proper.

that a large landlord of that district has issued, in anticipation of the enactment of the Bill of the Commission hundreds of temporary leases for the purpose of preventing the acquisition of rights of occupancy under the new law. Your Lordship will have noticed that the Pabna disturbances originated in a case in which the landlord had attempted to obtain agreements from the tenants, admitting that he might eject them on displeasure. Mr. Wace, the Officiating Collector of Birbhum, is of opinion that the tendency of the Bill of the Commission would be to foster the execution of formal leases and to make the insertion of a clause barring the growth of a right of occupancy even more common than it now is. 'There are doubtless many ryots,' says Mr. Reynolds, 'who have been induced to execute contracts which specify no term of years, but which provide that the right of occupancy shall not accrue, and that the lands shall be surrendered to the zemindar on his demand.' The Commissioner of Chota Nagpur refers to the disturbance of rights by extraneous and unauthorised action on the part of the land-owners and to attempts made to deprive the tenant of the privileges which are admittedly vested in ryots who have held land for 12 years. Mr. Nolan, a Collector who is said by the Lieutenant-Governor to know both Bengal and Behar, believes that occupancy rights are being very rapidly extinguished, especially in Eastern Bengal. Mr. O'Kinealy, remarks that twice in the course of the last 70 years have great attempts been made to treat the ryots of Bengal as tenants-at-will and to reduce them to the position of the *paikhasht* ryots of the North-Western Provinces—first, after 1812, when the zemindars, admitting that they could not eject, sought to attain their object by claiming a right to enhance at discretion; and secondly, at the present time, when

though unable to enhance at discretion, they are seeking the same end by dispossession after notice. Mr. Reynolds holds that it is now the avowed object of the zemindars to restrict and destroy the right of occupancy.

"55. Plainly an Act intended to affirm the then existing occupancy rights of the great mass of the settled cultivators is being deliberately defeated in practice; partly by the assumption, now usually impossible to controvert by judicial proof, that such rights did not exist antecedently to that Act, but were meant to accrue under its provisions; and partly by legal or illegal measures taken by the zemindars under colour of the law and in consequence of that assumption to prevent tha accrual of such rights. Whether the fields be changed or evidence be manufactured in the zemindari accounts, or written renunciations of permanent right be extorted from the ignorance or weakness of the peasantry, the object is one which is opposed to public policy. Even if no more decisive step were advisable, it would, we think, be imperatively necessary to provide that shifting occupancy within the same village or estate shall count as continuous occupancy; and to declare, as is proposed in the Bill of the Lieutenant-Governor, that no contract shall in any case debar a ryot from acquiring the occupancy right. But such provisions would have wide consequences. If the estimate of the Behar Committee may be generally accepted, they would affect not less than 60 per cent. of the ryots in Behar; nor can it be doubted that the avoidance of past contracts debarring the acquisition of the right would have, in Bengal Proper, an extensive operation. In these circumstances, as a change involving very far-reaching effects seems inevitable, we think that a complete remedy

Consequent necessity for an amendment of the law producing wide effects.

is more expedient than any partial reform, which, however unavoidable, would have to encounter equally strong opposition."

As the correctness of the conclusions arrived at by Government regarding the necessity for a general revision of the Rent Law has been questioned by the zemindars and other opponents of the proposed Tenancy Bill, we shall lay before our readers extracts from the opinions of some of the officers noticed in the Despatch of the Government of India quoted by us.

Referring to the illegal enhancement of rent practised by the Zemindars of Behar, Mr. Reynolds says :—

"It was strongly urged upon me during my recent visit to Bankipnr that the great evil which calls for remedy in Behar is the arbitrary enhancement of rent at the will of the landlord. One able officer went so far as to say that the one thing which Behar wants is a law which shall prevent any enhancement whatever of rent for the space of a generation. Without entirely subscribing to this proposition, I may say that my enquiries have led me to the conclusion that the average rate of rent in Behar is extremely high, amounting in many cases, perhaps in the majority of cases where unprotected * ryots are concerned, to a rack-rent." (Bengal Government Report, Vol. I. p. 267).

* By unprotected ryots I mean ryots who are not entitled to hold at fixed rates or (as many Brahmins and Rajpoots hold) at a customary privileged rate. The right of occupancy is practically no protection.

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Again. "The high rate of rent, however, is not the only, nor indeed the greatest evil. The increasing price of produce forms a counteracting influence which would in time have the effect of reducing almost any rack-rent

to an equitable rate. *The real mischief in Behar is that rents are enhanced at the mere will and pleasure of the land-lord.* The Lieutenant-Governor is aware how this has lately been done in Durbhunga. I was told during my recent visit to Bankipore that the extension of the right of occupancy was really a question of no practical importance in Behar. What, it was asked, is the value of a right which simply entitles the ryot to go on paying whatever rent the land-lord chooses to demand? The right to hold the land (it was urged) is a mockery, and the exemption from eviction is a worthless boon. Ryots are hardly ever evicted in Behar, for the new tenant could not possibly pay more than the old one." (Bengal Government Report, Vol. I. p. 268).

The arbitrary manner in which the Behar zemindars deal with ryots possessing the right of occupancy is thus described by Mr. Reynolds:—

"In Behar the case is very different. In that province a variety of causes have combined both to restrict the establishment of the occupancy right, and to render it of little value even where it might legally be claimed. Holdings are changed at the pleasure of the zemindars, and even when they are not actually changed, it is a not uncommon practice to show them in the zemindary accounts as having been changed. In lands held under the *bhaoli* tenure the question of enhancement does not arise, and the acquisition of the occupancy right is a matter of indifference. Some proprietors, as the Beheea landlords, introduce into their leases a special clause providing that the right of occupancy shall not accrue. Even in the rare cases in which the ryot has cultivated the same lands for twelve continuous years, and is in a position to prove that he has done so, the landlord treats the provisions of the law with entire

disregard. Instead of serving a notice of enhancement, he adopts the simpler plan of entering in his *jummabundi* the rent he intends to impose, and distraining the ryot's crop for the enhanced amount. The ryot may remonstrate, but he seldom resists, and still more seldom resists successfully." (Bengal Government Report, Vol. 1. p. 269).

Mr. Reynolds speaks of the evils of the *bhaoli* system in the following terms :—

"It is perfectly true that the *bhaoli* system, as generally practised in Behar, has scarcely a single redeeming point. It gives rise to continual oppressions and exactions. Cases occur, as remarked by the Behar Rent Committee (page 272), in which the grain is allowed to rot on the threshing floor or in the field, because the ryot will not agree to the zemindar's proposals for the division or valuation. The system operates as a direct discouragement of the growth of the more valuable crops; in fact, *bhaoli* cultivation is almost entirely confined to paddy.

"Even what are claimed by the defenders of the system as its advantages, are in reality among its worst evils. It was said in 1858, and the statement has been since repeated, that the ryots, having no capital and being an improvident race, would be ruined by one or two bad seasons if they had to pay fixed money rents; whereas under the *bhaoli* system they can always rub on. Few things can be worse than a system which, while it supplies little stimulus to exertion, removes the penalties of improvidence, and allows the mass of the people to 'rub on' in a degraded condition, from which they have neither the power nor the will to raise themselves. Nothing could be better adapted to perpetuate pauperism, and to destroy the growth of habits of fore-

sight, economy, and independence." (Bengal Government Report, Vol. I. p. 272.)

Mr. Metcalfe, Collector of Patna, whose opinion has been referred to by the Government of India, speaks of the evils from which the ryots of Behar suffer in the following terms :—

"Whenever the zemindar has felt himself strong enough to break occupancy holdings he has done so. The expression amongst the ryots is, that every one's tenure has been broken except the zarwalli logue, or those who were in a position to resist enhancement and dispossession. The well-to-do *maurasi* cultivator has held his own no doubt, but the great mass of the tenantry have yielded to competition raised by the aggressive action of the landlords, and are now paying rents which have doubled within the last sixteen years.

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"*A bhaoli tenure is the summun bonum of the landlord's wishes where the soil is good.*—The ryot's view of a *bhaoli* tenure differs in different localities. Where lands are subject to be swept by inundation, and the condition of harvest is precarious, the tenant prefers a *bhaoli* tenure as less risky ; where the lands are high, and there is less risk of destruction, he detests a *bhaoli* payment, and prefers payment in cash. The landlord's views are just the opposite. He would prefer cash payment in the first instance, and a *bhaoli* payment in the latter case. Very conflicting, then, are the interests of the landlord and the tenant. Owing to the constant changes of cultivators, which I have before stated, it is very difficult to ascertain the legal status of the great mass of the tenantry. Indeed, without a detailed enquiry, it is impossible to say, with any certainty, how the draft Bill, in its present integrity, will affect them.

"Sixteen years ago the rents for ordinary good lands was Rs. 2-8 per bigha; the ryots are now paying Rs. 4 to Rs. 5 about Barh. About Mokameh the rates formerly were Rs. 3 to Rs. 4; they are now Rs. 7 to Rs. 8 per bigha. This enhancement has been made, not through the instrumentality of the law courts, but through the power of the landlord. Lands have been taken from one tenant and given to another. In many instances these higher rates have been given on the promise of a reduction in rates when prices fall. Whatever compromise has been made has been done out of court: The impression on my mind, when I have conversed with ryots, and I must have talked with hundreds, is that they feel litigation with their zemindars to be a losing game, in which they must lose in the end; therefore it is better to comply with their demands; they comply therefore because of their inability to resist, feeling they have no security of tenure or money to contest their case. They must either give up the land or pay the increased rent. Under the circumstances of frequent transfer of holdings, the proportion of ryots who have retained occupancy rights is uncertain. The Deputy Collector of Barh suggests that at least 60 per-cent of the ryots must have legally acquired right of occupancy at some time or other, but that not more than 10 per cent. are at present holding the same fields for twelve years continuously. Thirty per cent. of the tenantry may, he thinks, have held their fields continuously for three years. The Sub-divisional Officer of Behar suggests that six-sevenths of the tenantry are holding lands for three years continuously. Changes in the south of the district have been less frequent than in the north. But I think that even in a great number of instances it will be found that yearly pattahs and kabulyats have been

exchanged, and that the zemindars have thus silently destroyed the rights which many tenants had under Act X. acquired. In Mr. Stewart's report mention is made of one zemindar who had deliberately done this in order to destroy rights of occupancy. The Deputy Collector of Behar reports that one-fourth of the ryots in his sub-division have held only for twelve years. The Deputy Collector of Dinapore writes: 'A very small proportion of the ryots in this sub-division have acquired occupancy rights—about one-eighth of the whole number have.' Here, as elsewhere, the zemindars are very active in preventing the acquirement of occupancy rights by shifting the tenants from time to time. Moulvi Abdul Jubber, a very experienced Deputy Collector, is of opinion that nine-tenths of the ryots have rights of occupancy, but are too ignorant to claim them, and, I may add, *such then* is the condition of things that the rights which the Legislature intended to give the ryots have been, through the apathy, ignorance and inability of the ryots and the machinations of their landlords, lost and destroyed" (Bengal Government Report, Vol. II. p. 229).

Here is what Mr. Nolan, Officiating Collector of Shahabad, speaks of the concoction of accounts by zemindars for the realization of enhanced rents.

"There is not," says he, "as far as I am aware, in Bengal, Behar, or Orissa, the slightest difficulty in realizing rents, provided the accounts have been properly kept. As a general rule, those who say they cannot collect their rents mean that they cannot realize according to a jummabundi or rent-roll which they have concocted, but to which the ryots have not agreed. They are in the position of a tradesman who has prepared, or taken over from a predecessor, a book made up of imaginary debts,

and have as much reason as he might have to grumble that there is a difficulty in realizing through the courts or otherwise. Real rents, that is, those to which the ryots have agreed, or which are customary, are every where paid with general punctuality, and in exceptional cases the landlord has every power and right for enforcing his demands, which has been trusted to proprietors in any civilized country, including the hypothecation of the crop." (Bengal Government Report, Vol. 11. p. 237)

Mr. Barrow, Officiating Collector of Durbhunga, bears witness to illegal ejectments by zemindars in the following terms.

"My experience, gained in working the criminal law, is that a great number of illegal ejectments are made dead in the teeth of the law. A zemindar wants to eject a ryot, and he accordingly tells another man to cultivate his field. The possessor comes and complains, but, as a rule, his complaint is dismissed as one fit only for the Civil Court. The zemindar through his amla or nominee has set up a *defence of its being zerat land*, or the lease having terminated, or such like, and either the case gets thrown out on the police report or by the Magistrate. Very often, no doubt, if the case were taken to the Civil Court, the ejectment would be sanctioned, but very often it would not. Many an obnoxious ryot's back, I believe, is broken in this way; for it is needless to say that being dispossessed, the ryot has to bring the suit instead of the zemindar, and on him lies the burden of proof and somewhat greater expense, besides being out of possession, and so losing the means whereby he earns his bread." (Bengal Government Report, Vol. II. p. 257.)

We would ask the reader to notice how the necessity,

for keeping a record of the *zeerat* or *khamar* lands as proposed in the Bengal Tenancy Bill, is proved by the above disclosure of the tactics followed by the zemindars.

Here is what Mr. MacDonnell, Officiating Collector of Sarun, at present Secretary to the Bengal Government, speaks of the effects of the *bhaoli* system :—

"Under the *bhaoli* system the landlord, when strong enough, appropriates in good years a far larger share of the produce than he could buy with the money-rent of land of similar situation and fertility. This is undisputable, while he supplies nothing but the land, and, in parts of Gya, some facilities for irrigation. These irrigation embankments, maintained not always in good repair, are appealed to by the advocates of the *bhaoli* tenures, as something peculiar, raising the Gya land system to a level with the *metayer* system of Continental Europe. My answer is, that the question at issue is the comparative advantages of *nukdi* and *bhaoli* rents, and that under the *nukdi* rent system, zemindars are often bound by custom to maintain similar embankments. They do so in some parts of Sarun and they would do so in Gya, no less under money rents than under rents in kind.

"Returning to the consideration of the nature and effects of *bhaoli* tenures, I wish to point out that in bad years, even without the security which the rise in prices caused by bad years imparts, the landlord's share of the produce exceeds the money-rent such land would pay. Let any one look through the estimate of crop out-turn in South Behar in bad years, and then examine the prices current of those years, as I have done, he will find that this is so. He will find that the landlord without running any risks of the partnership (for it is

not a rent system at all) is saved from loss in bad years, while in good ones he appropriates so much of the produce that the ryot is never able to provide against years of crop failure from the out-turn of good years."

How zemindars destroy rights of occupancy will appear from the following extract from "notes" by Mr. Edgar.

"If it be certain, as I believe, it is, that an occupancy right does exist throughout Behar, and that both land-lord and ryot are fully aware of its existence, the question arises.—How comes it that the land-lord has in so many cases been able to destroy the right without the ryot being able to resist? My answer is that the agency employed has been in most cases the *thikadar*, and that he has only been able to effect his purpose through defects in our administration. I believe that in large estates the danger of interfering with the ryots' rights, and so setting the mass of the ryots against the land-lord, would have deterred him in most instances from directly taking the measures the temporary *thikadar* was able to take without the same risk, and that in both large and small estates land-lords were formerly under restraints of public opinion and possibly of conscience, from which the *thikadar* was generally free. Consequently the sole protection the ryot has had against the *thikadar* has been what he has been able to obtain either from the executive authorities or from the courts of law, and this protection has been too often wanting, owing not to any weakness in the legal position of the cultivator, or to any insufficiency of the law, but to defects in its administration. I am convinced that, if the police and the criminal courts had consistently done their duty during the last twenty years, there would now be no question about the existence of occupancy rights in

Behar, and we should be free from many of the difficulties which we have to face at present. The cultivating classes of Behar are in quite a remarkable degree amenable to the authority of Government, and this authority has come to be represented in the minds of the mass of the people almost exclusively by the police. Now for years back almost all the power of the police has been practically at the disposal of the land-lords in their disputes with their ryots. The police authorities have either overlooked the complaints of the ryots against their land-lords, or they have actually helped the land-lords by measures taken to prevent breaches of the peace. As a rule the ryot finding the police against him did not go further for aid; but if he went into the criminal court, the chances were that he was referred to the civil court for redress, and this was really tantamount in most cases to denying him any redress whatever." (Bengal Government Report Vol. II. p. 270.)

We have seen what Messrs. Reynolds and Metcalfe speak about the enhancement of rents prevailing in Behar. The evidence of Mr. Edgar, who is equally well-known both to Government and to zemindars, will be found very important in connection with this subject.

"I have very little to add" says Mr. Edgar "to Mr. Reynolds' Note on enhancement of the 11th December, with every word of which I fully agree. It cannot be too often repeated that the great evil of the past in Behar has been constant enhancement of rent, and that this is the great danger of the future. The figures given by Mr. Reynolds from the road cess papers are sufficiently startling in themselves, but even they do not clearly show the extent of the rack-renting evil in Behar. Mr. Reynolds has pointed out that Sarun is held to be under-

assessed in the road cess valuation. Mozufferpore is still more so. This is the opinion of Mr. Worsley, under whom the assessment was made, and it is confirmed by strong outside evidence. There are probably a thousand square miles of waste land yielding no rent whatever in Shahabad, and a similar amount in Gya. There is a much greater portion of uncultivated waste in Chumparun, where the incidence of the rent on the cultivated area probably amounts to Rs. 1,200 a square mile. This I take to be far higher than that obtaining in any similarly circumstanced district in Bengal, but it does not really represent all that the landlord gets from the land. A very large proportion of the district is let out in *thika* to indigo planters who have lent enormous sums to the landlords at a lower rate of interest than they actually pay themselves for the money. The factories recoup themselves for this, not in increased rent but in indigo undoubtedly grown at a loss to the cultivation. Besides all this, the road-cess returns are from six to eight years old, and the enhancement screw has been at work since. The Durbhanga case is an illustration of this. The road-cess valuation was Rs. 1,922 the square mile. This was undoubtedly under the mark; yet we find the new settlement of the Durbhunga estates giving an increase of 22 per cent in one pergunnah, and 11 per cent in another. Now we must never lose sight of the facts that these returns show average rates over the whole of a district, and that they are calculated not only upon the lands which pay no rent whatever, but also on the land of cultivators holding at privileged rates. All this goes to increase the rates imposed on the great mass of the cultivators; and I believe that these rates amount in many cases not merely to a rack-rent, but to a rent which can only be fully paid in prosperous years. This iset h

secret of the tremendous arrears on almost every estate in Behar, and of the bad collections of the Wards' Department. The jamabundis show impossible rents. In a bad or even an average year the land-lord collects all he can, and carries on the balance as an arrear, a portion of which may be screwed out of the ryot in a year of exceptional prosperity, and which can always be held *in terrorem* over him in case of his turning refractory." (B. G. R. V. 11. p. 273)

Further. "A brief notice of some of the cases which I have enquired into during that short space of time will probably give a better idea of the state of things here than any general discription. In one village the thikadar acknowledges to having made a demand of Rs. 2 a bigha over and above the rent from the cultivators as *salami*. He says that they at last agreed to pay him Rs. 1-8 a bigha, and that when they come to pay their rent, he first deducts the *salamis* before giving them credit for the rent. As they now object to pay the *salami*, he has refused to give them receipts for the amounts already paid, and threatens to make them over to an indigo factory of course with *the rents actually paid by them shown as still in arrear.* It should be explained that nothing is so much dreaded by the cultivators as to have their village leased to a factory. The ryots of another village have held for generations some flooded lands on which they grow rice on the *danabundi* form of the metayer system. Last year there was a dispute about the valuation, and the cultivators cut the crop before the dispute was settled, The *thikadar* brought a suit in the civil court and obtained a decree based on the assumption that the produce was forty maunds a bigah which the ryots say was more than double what they actually got from the land. This year

the *thikadar* claimed the same amount, and the ryots have been afraid to cut the crop. I have been over all the lands. The dhan has rotted and is now absolutely worthless. I do not think that, if cut, it would have yielded 25 maunds a bigha, but I am informed that the *thikadar* is now preparing to put in a claim against the ryots for the value of his share, assuming the produce to be forty maunds. Now these cases are not specially bad ones and probably each district officer in North-Behar has during the course of his cold weather tour, already come across more serious ones. But what seems to me the grave point about the matter is that such a list of cases should come to the notice of an officer fresh to the district, without any previous knowledge of what to expect, in the short space of time that I have been in Chumparun. It indicates a state of things which should not be allowed to exist a day longer than can be helped. I have already mentioned the Tajpore case, in which I found lands held by *undoubted occupancy ryots being converted into the zeraat* of an indigo factory against the will of the ryots. The District Superintendent of Police has just sent me a report of a similar case from another part of the district, in which he has found *lands long occupied by hereditory cultivators taken from them against their will by the thikadar, and made over to an indigo factory.*"

"I have also mentioned another case in which an indigo planter, on getting a *thika* of a village, applied for constables to be paid for by the factory ostensibly in order to keep the peace, but really of course to help in breaking down the ryots' objections to grow indigo. Now that this has failed, the factory has fallen back on a demand for rents said to have fallen into arrear before the village was taken in *thika* by the factory. In another part

of the district I found that a landlord had raised the rents of an estate settled with him in 1850 under Regulation II of 1819 from about Rs. 17,000, the amount ascertained at the time of settlement, on which the Government revenue of half, viz., 8,500, was fixed. to Rs. 86,000, the amount returned by him for the road cess valuation of 1873-74. He had obtained in one village of the estate a decree for enhancement to between three and four times the rate of rent ascertained at the settlement, on the ground of the improvement effected by the construction of an irrigation embankment and channel which the settlement map and papers show to have been actually in existence when the settlement rates were ascertained."

"The owner of an adjoining village has obtained a decree for enhancement to what is in this district an exorbitant rate, because the villagers have been *so worn out* by litigation that they could not afford to fight any longer, but have let the case go by default."

(B. G. R. Vol. 11. p. 278).

Mr. Finucane who has had long and varied experience in Behar observes in one of his reports as follows :—

"When we compare Mr. James Grant's description of the flourishing condition of agriculture, manufactures, and commerce of Behar in 1786, with Sir Stuart. Bayley's descriptions of poverty, misery, and oppression from which the same population suffered in 1873 (and continue to suffer), the question may well be asked how comes it that, while Dacca and Mymensingh have been converted from uncultivated jungles to highly cultivated land, inhabited by a prosperous population, the poverty of Behar tenants has become so great within the same period and under the operation of the same laws as to be a scandal to our administration ?

" The answer is that the laws restraining zemindars from enhancing their rents have been practically a dead letter in Behar. If it be asked why this should be so, it may be replied in Mr. Mackenzie's words (which apply with special force to Behar) ' that the landed and wealthy classes have powerful organs in the press, and powerful friends both here and at home ; many of them are very amiable persons, officials are glad to do them favours, and find it pleasant to be on friendly terms with them. Every prejudice arising out of the relations of land-lord and tenant in Great Britain is entirely on their side."

" Be the cause however what it may, the fact is obvious that Behar zemindars have been permitted for the past ninety years to enhance their rent to a degree out of all proportion to any increase in the value of the produce, and out of all proportion to the enhancements of rent in Bengal (or it may be said in any part of the world) during the same period." (B. G. R. Vol. 11. p. 387.)

Mr. Finucane was one of the special Rate officers deputed to Behar in connection with the proposed Bill and here is what he speaks of one of the villages, Jaezpotee, that came under his enquiry.

" After the lapse of 43 years what do we find in this village ? We find that the area under cultivation has decreased by four beeghas, while the rental is now exactly six times the rental of 1247 F. S. (1840. A. D). In other words, average rates all round have been enhanced by 500 per cent in 43 years, the rise in prices during the same period being at most 73 per cent. There is reason to believe that the state of things existing in Bahu Nundan Lal's property is not very materially different from what exists in other properties in the

Durbhunga, Mozufferpore, and other North-Gangetic districts of Behar." (Supplement to the Gazette of India. October 20, 1883. p. 1722).

The following extracts from a letter No. 371 dated the 4th March, 1879, from the Registrar of the High Court, Calcutta, to the Secretrary to the Government of Bengal published in a Supplement to the Calcutta Gazette for April 23, 1879, will show that in the opinion of the Judges the systematic efforts of the zemindars to enhance rents legally or illegally have been general, and as might be expected from such circumstances have led to rioting and other breaches of peace :—

" The Judges desire to reiterate once more what they have repeatedly asserted before, *that organized resistance to the payment of rent by ryots is invariably due to systematic efforts to enhance them* with or without cause, that bad relations between zemindar and ryot are almost universally due either to the property changing hands and to the speculator's attempt to augment the yield of his purchase or to the zemindar allowing some one, a middleman, to come between him and the ryots, the middleman talookdar or whatever he be called being left very commonly to raise the profit which he pays by putting pressure on the ryots.

" The Judges desire to express the astonishment that they feel at the observations frequently made on the subject of riots arising out of rent disputes. Zemindars and perhaps officials are apt to think that the ryots are to blame. Now it seems to the Court that from the nature of the case the blame must generally rest with the zemindar. Of course the judges do not mean to say that he is not more or less frequently subjected to great annoyance, and perhaps to loss; but so long as he confines himself to legal measures for enforcing his right

there cannot ordinarily be a riot. If rent is refused, he can sue; if he is resisted in distraining, he can apply to a Court for assistance; if he is entitled to measure lands and is opposed, he can do the same. There is a legal remedy in each case, and if there is a riot, it can hardly be that it does not result from his impatience, pride, and preference for illegal courses. An obstinate ryot can be coerced, but he can legally only be coerced by the aid of the Court; if no other coercion is attempted, there is no occasion for a riot. There may be exceptional cases in which the tenants take the initiative and resort to violence to drive out or intimidate the agent of a zemindar acting strictly within the letter of the law; but if there are such, the Judges believe them to be quite exceptional, and their experience founded on the criminal cases that come before the Court bear them out in saying that it is very rarely that violence of this class is wholly unprovoked."

. . . . . .

"To allege falsely that the rent of the past years was higher than in the end it is proved to have been, and to sue on this allegation for the rent of the current year as a rent settled by tacit agreement with a view to use the decree, if obtained, as proof for the future of the rate of rent, is a trick which is practised every day. The Judges have no reason to suppose that false claims are more numerous than false defences, but they have equally no reason to suppose the contrary."

"An enhancement suit, regular or irregular, is a proceeding of vital importance to a tenant: if he has a right to hold free of enhancement and fails to prove it, he is simply ruined; whereas if a land-lord fails to establish a claim to enhancement, even if really a just

one, he is no worse off than he was before as regards his actual income."

We would invite the reader's special attention to the remarks of the Judges of the highest Court in Bengal, that the blame of riots arising out of rent disputes "must generally rest with the zemindar."

That the causes which have hitherto produced agrarian disturbances are still at work will appear from the following extract from the Resolution of the Government of Bengal on the Report of the Land Revenue administration of the Lower Provinces for 1882-83.

"34. *Relations of landlord and Tenant:*—There were fewer enhancement and more relinquishment notices than in the preceding year; but the Board do not think the figures on either head indicative of the real feelings of zemindars and ryots, or such as to call for special remark. The Board give extracts from some of the divisional reports as to the state of feeling generally between zemindars and ryots in these divisions; but do not sum up the effect of the opinions they quote, which besides, cannot be taken as a satisfactory indication of the state of opinion in other divisions which are not mentioned. However it may be noticed that in the Rajshahye Division opinions are of a negative rather than a positive character, the fact that in most districts no open breaches of the peace have occurred being apparently a matter for congratulation. The evidence before the Government, however, seems to show that a feeling of distrust and hostility exists between zemindars and their ryots (with but a few exceptions) in this division. As the Collector of Pubna says: 'General testimony concurs in the statement that there is an utter want of sympathy between land-lords and tenants.' The Commissioner of the Dacca Division states that, while 'everywhere considerable

difficulty is felt in realizing rents,' in Mymensing 'the unsatisfactory relations between land-lords and tenants have grown and become intensified.' Such a state of tension,' says the Collector of Mymensing, 'cannot be expected to last very long without either collapsing or developing itself, and it is to be hoped that the new Tenancy Act will soon provide a *modus vivendi* by providing land-lords with a workable machinery for enhancing to a fair figure, and for getting in arrears of rent admitted to be due. Under the present law, enhancement by suit in court is virtually impossible, and the levy of arrears by suit costly, and troublesome, without being speedy.'

"If enhancement by suit in Court be difficult, enhancement by illegal cesses out of court seems easy, if one is to judge by the procedure of the zemindar of Sherepur, who has habitually levied a cess called '*saheblok khilana ka kurcha*' (expenses of hospitality), because on one occasion some years ago he entertained some European gentlemen at dinner.

"35.—From the Patna Division the Commissioner reports as follows:—

'The relations between the land-lord and the tenant were not such as to call for any special notice. They were, on the whole, peaceful and undisturbed. It is, however, generally believed that there is want of real confidence and cordiality between the two classes. Instead of working together in a friendly way they try to take advantage of any points which may tend to the other's loss. Writing on this subject, the present Collector of Mozufferpore characterises the zemindars of of his district as short-sighted, grasping, and oppressive. This is generally true of the zemindars of Behar as a class; but it is satisfactory to observe that the ryots

are gradually and steadily awakening to a knowledge of their rights and privileges, and that they do not now as they used to do before, submit, without strenuous opposition, to the illegal enhancements of their land lords.'

"In this, 'short sighted, grasping, and oppressive' policy on the part of the zemindars, and in this growing 'strenuous opposition' on the part of the ryots, the beginings of serious trouble are perceptible if early measures are not taken to counteract them by removing their obvious causes. As the late, Lieutenant Governor, shortly before relinquishing his office, said on this subject of agrarian disquiet in Bengal: 'All the elements of disturbance are still existent; and the Lieutenant-Governor would strongly advise the Government of India to have the rent question settled in Bengal while the country is tranquil, while seasons are favourable, and the people well off, and reason can make its voice easily heard rather than allow things to drift on till another famine or a second out-break of the Pubna riots compel the Government to take up the subject with all the haste and in completeness that too frequently affect measures devised under circumstances of State trouble and emergency.' Sir Ashbly Eden wrote in the presence of splendid harvests and general prosperity. But even now significant indications are not wanting that a continuance of this prosperity cannot be counted upon; while with short crops agrarian unrest is under present circumstances, certain to occur. It therefore seems to Mr. Rivers Thompson to be the imperative duty of the Government no longer to postpone the legislative measures necessary for placing on a satisfactory and permanent basis the interests of all classes of the agricultural community."

(Resolution on the Report on the Land Revenue Administration of the Lower Provinces of Bengal for 1882-83.)

SHOULD THERE BE ONE OR TWO BILLS?

The necessity for a general revision of the Rent Law being proved, as we have seen by an overwhelming mass of evidence, the question next to be considered is—should there be one Bill or two Bills ? The answer to this will, be found in the following extract from letter No. 972, T. R. dated 27th September 1883 from Mr. MacDonnell Secretary to the Government of Bengal, to the Secretary to the Government of India, to which we shall have often occasion to refer while discussing the provisions of the Bill.

"6. In the first place I am to offer a few observations on the propriety of legislating for the whole of these provinces in one Bill, as the proposal to do so meets with some opposition. It will be within the knowledge of the Government of India that doubts on the point, suggested at an early stage of this discussion, were formulated by Mr. Reynolds in the note which is printed in Appendix IV., Volume I of the Report submitted by the Bengal Government in 1881 ; but Sir Ashley Eden, on full consideration of the subject, thought separate Bills unnecessary, believing that if his proposals for basing the occupancy right on a broad and popular basis throughout the whole of the Lower Provinces met with approval, and if the improvements suggested by him in the law of distraint were accepted, the matters calling for exceptional treatment in connection with Behar would be practically reduced to two,

Proposal to legislate separately for Bengal and Behar considered.

viz, the disposal of claims to *zerat* lands, and the regulation of the procedure for the regulation of rents in kind.'

"To these remarks of his predecessor, as well as to the arguments advanced by Mr. Reynolds and others in favor of separate legislation for Bengal and for Behar, the Lieutenant-Governor has given his careful attention; and while he admits that differences do exist between both portions of these provinces in some respects, he is not prepared to say that they are such as call for divided treatment. It is true that in Bengal the demand for legislation came, in the first instance, from the landlords, who urgently pressed for increased facilities for enhancing and realising rents, while in Behar the cry was from the ryots for protection from illegal enhancement and ejectment. It is also true that in Bengal the extent to which sub-infeudation has gone produces difficulties in adjusting the mutual relations of proprietor, tenure-holder, and ryot, while in Behar those difficulties are less developed. It is further true that in some districts of Behar the system of corn-rents is far more prevalent than in the districts of Bengal Proper. But granting all this, an examination of these points of apparent difference will show that the differences are of degree, rather than of essence; while in Bengal we have well-marked instances of the same evils which depress industry and disturb the public peace in the Patna Division. If ejectment, as a means of extorting enhanced rents, widely prevails in Behar, evidence is not wanting that a similar practice is in vogue even in the most forward district of Bengal. Does a Behar Zemindar or thikadar attach the whole crop of the ryot to compel payment of an increased *jumma* or of legally irrecoverable arrears?—the Bengal Zemindar applies corresponding pressure through suits

for monthly kists, or through some other legal device, in order that he may (as one recently ventured to tell a sub-divisional officer) 'by hook or by crook' raise the rents and break the rates. Where Behar landlords shift their ryots from field to field (as they have admitted they do) to prevent the growth of prescriptive rights, the Bengal zemindar can apply no less potent pressure, if one may judge from the 'arguments' which are registered in such widely different districts as the 24-Pergunnahs and Mymensingh. In Bengal and Behar alike the efforts of landlords are directed towards the same end—enhancement of rent, prevention of the growth of tenant-right, and its destruction where it has grown up; and if in Bengal they are not so successful in their efforts as in Behar, that is not because of any dissimilarity of aim. The same evil demands the same broad line of treatment in all portions of these provinces. To prescribe every variation of detail to suit local circumstances is not within the compass of any law; these variations must be worked out in practice by the applications of the broad principles of the law to individual cases by the courts or other authorities entrusted with the administration of the Act."

It is true that some of the Bengal Officers consulted by Government have recommended separate legislation for the two provinces. But our experience extending over the whole of Eastern Bengal and a portion of Western Bengal Proper goes to confirm the truth of the statement, contained in the above extract, to the effect that "the differences (between Behar and Bengal Proper) are of degree, rather than of essence." That the zemindars themselves are also conscious of the weakness of the arguments advanced in support of two separate Bills, is evident from their not having raised

any objection to the Bill on this ground, in their petition to Parliament. It is of the utmost importance that Government should take timely steps for preventing in Bengal, the development, in a large scale, of the evils now preying in Behar, and to this end there should be one law for the whole of these provinces.

The Landholders of Bengal and Behar begin their petition to Parliament with the statement that they "are filled with great anxiety, apprehension, and alarm at the introduction into the council of His Excellency the Viceroy and Governor-General for making Laws and Regulations of a Bill entitled the Bengal Tenancy Bill, the manifest tendency of which seems to be to revolutionise the present relations between landlord and tenant in the provinces of Bengal and Behar, to redistribute landed property on a new and inequitable basis, and to fetter the freedom of action of all classes interested in agriculture by driving them at almost every step of their mutual transactions to Courts of Law and fiscal officers, and foster dispute, litigation, and animosities in lieu of peace, harmony, and good will among them." We shall come to this by-and-by.

We now proceed to discuss the principal changes proposed in the Bill to which objections have been taken by the zemindars.

I.—Distinction between khamar and Raiyati Land.

In the first place the Bill proposes to mak a "distinction between 'khamar land' or the private land of the proprietor, and raiyati land, or the land destined for occupation by raiyats." It further authorizes the Local Government to order survey and register of khamar lands situate in any district or part of a district. (Sections 5 to 13). On this the zemindars in paragrap 9 of their petition to Parliament observe as follows :—

"I. The Bill proposes to effect a re-distribution of land by making an allotment of it in a manner which neither past history nor present facts justify. It declares that all lands, except such as are in the private possession of the landlord in respect of which he may prove 12 years' continuous occupation, shall be regarded, from the date of the introduction of the Bill, as the specific property or portion of the tenant class for habitation and cultivation, along with various incidental rights; that at the discretion of Government the lands may be surveyed and demarcated at the expense of both landlord and tenant; that conflicting claims to such lands shall be the subject of a summary investigation; and that the landlord, even in case of relinquishment of a tenancy or of its purchase by him if he wishes to let it, shall be bound to re-let it to a new tenant at the old rate and conditions, including permanent occupancy right. This is wholly an innovation, and makes a serious enchroachment upon the proprietary rights of the landlord. It is in direct antagonism with past history, for when the Permanent Settlement was concluded, it was the land which sought the tenant, and not the tenant who sought the land; and this was particularly the case in the distribution of waste-land which had been made over to the landlords or zemindars by way of compensation for the ruinous assessment of the settlement, and the proprietary right from the reclaimed portion of which is now being taken away from them. The land has thus no such characteristic attached to it as now proposed, and the landlord was in no way fettered in the mode of the settlement of his estate. The proposed provision will not only deprive the landlord of his inherent right of re-entering upon land which a tenant may relinquish, or which may lapse on the expira-

tion of a lease, but will also give rise to serious dispute, misunderstanding and litigation between landlord and tenant in the establishment of their claims to different classes of lands."

Again, in the "Note" appended to the zemindars' petition, the following remarks appear under sections 5 to 8:—

"The Sections involve an arbitrary inroad upon one of the most valuable rights of the landholders. While khamar lands are frequently converted into ryoti lands by the act of the landholder, large additions are daily made to his khamar lands by accretion, relinquishment, deaths of ryots without heirs, purchase of holdings, &c., From their very nature, all accretions are private property of the landholder, and as such they must begin by being khamar, for no ryoti interest has till then accrued on them, but the Sections deprive the landholder of the full benefit of such accretions. This is quite uncalled for and most arbitrary. As regards accretions, the existing laws grant them to the zamindar as his special right. And the proposed sections indirectly transfer them to persons who may in future become ryots. Nothing can be more unjust, moreover, than to fix a maximum limit to the area of khamar lands of a landholder; and thus to place restrictions on his right to let such lands in any manner he pleases. The principle which underlies these sections would seriously clog, if not extinguish, an undoubted right which landholders have all along enjoyed, namely, the right of claiming enhancement of rent on the ground of the ryot being in possession of more land than what he pays rent for. But besides being unjust to the landholders, the measure is eminently unpractical. It ignores the existence in the village of all rent free lands, all service lands, and all land temporarily given away by the land-

holders for the benefit of pundits, or moulavis, or for the expenses of worship of a village idol, or for the annual celebration of a village festival. To what class would these lands belong? To poor villagers a classsification of lands which reckoned all these lands as ryoti lands would be simply incomprehensible. Besides, a very small number of zemindars and talookdars have got measurement papers of their villages, which might enable them to submit statements of khamar lands in their villages. It would require decades of time and outlay of crores of rupees to enable the Bengal landholders to submit such statements. The amount of trouble which a determination of khamar and ryoti lands would cause to the landholders and ryots would itself be enormous, and the loss of time to public officers in deciding disputes and appeals would be great, specially as the areas of a vast number of estates and villages undergo continual changes by the action of large rivers which intersect Lower Bengal."

The above objections of the zemindars are met in the letter of the Bengal Government, noticed above in the following terms:—

"8. The provisions relating to the distinction between *Khamar* and Ryoti lands have been subjected to a good deal of criticism, the outcome of which is to confirm the Lieutenant-Governor's belief in the usefulness of those provisions, especially in Behar It may be conceded that the chapter is not so much required in Bengal as in Behar, and that there is truth in what some critics of the measure say, that if in Behar landlords strive to absorb ryoti lands into Khamar, in Bengal ryots strive to convert Khamar into Ryotti. In either case, however, it would seem that some provisions,

Distinction between Ryotti and Khamar land.

such as the Bill contains, are necessary; although the Lieutenant-Governor is not prepared to say that, if enacted, they will be found as necessary, or made as much use of in Bengal Proper as in Behar. The requirements of particular districts will, however, be sufficiently met by the discretion with which section 7 of the Bill vests the Local Government. Undoubtedly the chapter may be needed from time to time in particular tracts in Bengal, where it would prove an useful adjunct to some other provisions of the Bill. But it would probably be unnecessary to enforce it on any large scale in Bengal Proper, if landlords do not abuse their power of pre-emption by converting Ryotti into Khamar land. This point will be dealt with later on.

Proposals to recognize an increase in khamar land examined.

"Some critics of the Bill, while admitting the necessity for the chapter, especially as regards Behar, desire to modify it so far as not to absolutely limit for ever the stock of khamar land. Some would allow it to be increased by the absorption of ryotti land; others by the reclamation of waste-lands and by alluvial accretions; and a few, referring to local peculiarities of tenure, would class as khamar such lands as the *utbundi* lands of Nuddea. On the general principle whether ryotti land should be absorbed into khamar, the Lieutenant-Governor entertains a decided opinion in the negative. Without wishing to reduce the existing stock of the landlord's khamar or zerat land (in which it should be distinctly understood that the lands for instance, known as indigo zerats, which are essentially ryotti, are not included), Mr. Rivers Thompson believes that every consideration of law, of experience, and of expediency, is against its extension. It has been affirmed that khamar was originally the

waste unreclaimed area of the village which the ze mindar was permitted to cultivate by contract for his own advantage during the term of his revenue engagement with the Government of the day, but which, as cultivators settled on it, became part of the ryotti land of the village. However this may be, the fact is indisputable that under the Permanent Settlement Regulation (VIII. of 1793, Sections 37 to 39) no land was recognized as khamar which was not such on the 12th August 1765, the date of the grant of the Dewani, and there is no law recognizing the creation of khamar land subsequent to that date. These facts afford a sufficient answer to the charge of an infringement of ancient rights, which is brought against the present proposals to define the limits of khamar land; and it may be added that from the facts established in other countries, of the clear line of distinction between demesne and tenemental lands, analogies* might be drawn in favor of those provisions of the Bill.

"If, however, it be inexpedient to permit the increase of the khamar area by the absorption of ryoti land, can the same be said of an increase through reclamation of waste lands, alluvial accretions, or lands subject to special conditions of cultivation. In the Lieutenant-Governor's opinion, the prohibition should hold good here too. In those districts where large waste areas still exist, and where there is no customary right of pasturage or easement involved, the faculty of converting waste into khamar might perhaps be conceded without any immediate loss to the community at large; though, looking

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* Reports from Her Majesty's Councils, parts I-V, 1869-70 See also Mr. Justice Field's "Landholding &c. in various countries."

to the over-growing importance of emigration from the more crowded tracts to those wastes, there would be ultimate loss and difficulty. In those districts, however, where the village wastes are the only pasture grounds, the case assumes a different aspect, for admittedly one of the most crying wants in these provinces is the provision of sufficient pasturage for cattle. While our Forest Department is unsuccessfully struggling with the difficulty of providing fuel and pasturage reserves that manure now used as fuel may be liberated for agricultural uses, and cattle preserved for husbandry, it would surely be unwise to hasten the absorption into the cultivated area of such limited pasturages as still remain by any such incentives as the proposals in question are calculated to afford.

"It is stated by some that local custom usually classes churs as khamar, and that such a custom ought to be recognized; but the Lieutenant-Governor must say that he does not see on what basis of right such a custom, which is opposed to positive law, could be defended. The principle guaranteed by section 4, Regulation XI of 1825, that a ryot or 'any description of under-tenant whatever' has a right to an accretion to his holding, would if properly pleaded dispose, in the Lieutenant-Governor's opinion, of many such 'customs' in a court of justice. It is well known that churs and alluvial accretions form large tracts of country, especially in the deltaic districts. Many of these churs are inhabited by an industrious class of resident ryots; and any custom, even if legal, which would deprive them of agrarian rights, would be indefensible on grounds of public policy or justice to individuals, and a fertile source of embarrassment to Government.

"Finally, in regard to *utbundi* lands, the Lieutenant-

Governor does not see that any exception to the general rule is needed. As far as he is aware, the *utbnndi* tenure is only special as regards the system on which the rent is paid, and does not affect the legal attributes of the land. It is not so much that one ryot cultivates one *utbundi* holding one year, and a different ryot another year, as that rent is paid only on the extent of land actually cultivated for the year, and by measurement at harvest time according to the actual outturn of the crop. The Lieutenant-Governor understands that prescriptive rights of occupancy under Act VIII of 1869 are now actually acquired in these *utbandi* lands, and he would not by any provision impede the growth of such rights."

We would invite the reader's attention to Sections 37 to 39 of Regulation VIII of 1793, quoted in the above extract. Under section 38, grants for *malikana* (zeraat) lands, in Behar, "not made or confirmed by the Supreme Authority of the country are declared invalid by the Regulations passed on the 8th August 1788" and by section 39, such proprietors as declined to engage for their lands were allowed the "option of retaining possession of their private lands, held under the denominations of *nankar*, *khamar*, and *nij-jote* on their proving to the satisfaction of the Board of Revenue that they held them under a similar tenure previous to the 12th August 1765, the date of the grant of the *Dewani* to the Company." As is stated by the Bengal Government, there is no law recognizing the creation of *khamar* land subsequent to 1765. The zemindars' contention that the proposed measure will be an infringement of the rights conferred on them by the Permanent Settlement therefore falls to the ground.

But are the results of the proposed measure likely to prove as serious as has been stated in the zemindars'

petition to Parliament? The answer to this will be found in the Memorial to the Viceroy of the Landholders of East Bengal. "This (Chapter II)" say they, "refers to khamar lands. Too much importance has been attached to this class of lands. Large zemindars seldom have *khamar* or *nijjote* lands, and it is only small landholders or talookdars who keep such lands for their own maintenance." (Supplement to the Gazette of India, October 20, 1883, p. 1969). As far as we have been able to understand after a careful study of the Bill, it seems to us that there is nothing in it to prevent a zemindar from keeping in his own cultivation lands which he reclaims through hired labourers or which revert to him by purchases &c. *The only difference between such lands and khamar lands is that, except under certain circumstances, no right of occupancy can accrue to a ryot with respect to khamar lands, whereas such a restriction does not apply to other lands.* This cannot in any way prove materially disadvantageous to the zemindar. What the Bill proposes to effect in Chapter II, is simply this: So long as a zemindar keeps in his direct possession any ryoti land he will not not be forced to let it out, but when he lets it out the ryot receives it with all the incidents attached to ryoti lands and the zemindar cannot turn him out from it as he can turn him out from his khamar land. This seems to us to be quite fair and reasonable as in consequence of the increase that is taking place in population the demand for land is also increasing daily and nothing should be done to diminish the ryoti land of a village.

Why the zemindars should in their petition have introduced the question of rent-free lands is what we have not been able to understand. Rent-free lands are

not khamar lands. They are lands alienated by a zemindar from out of the ryatti lands of a village and if they again revert to him they will revert as ryatti lands. The zemindar's contention that a very small number of landholders have got measurement papers is, in our opinion, founded on long and varied experience in the management of zemindari affairs, totally incorrect. That the zemindars are here simply fighting a ghost of their own creation is evident from their assertion that the *principle underlying these sections* will seriously clog their right to claim " enhancement of rent on the ground of the ryot being in possession of more land than what he pays rent for !"

II.—Extension of the Right of Occupancy.

In section 47 the Bill proposes to confer the right of occupancy on 'every *settled rayat* of a village or estate, holding, after the 2nd March 1883, as a rayat, any rayoti land comprised in that village or estate, notwithstanding any contract to the contrary. Section 45 defines a *settled rayat* to be one who has continuously held, as a rayat, rayoti land situate in any village or estate, for twelve years continuously, though the land so held by him at different times during that period may have been different. These proposals have met with very great opposition from the zemindars, as will appear from the following extracts from their petition to Parliament :—

" II. At the time of the Permanent Settlement the resident hereditary tenant had fixity of tenure ; custom had recognized that right, but no period had been fixed for the accrual of the right ; by Act X of 1859, 12 years' continuous possession was declared to be the basis of occupancy right ; and this provision was allowed retrospective effect ; accordingly a squatter, by mere efflux of

12 years' time, acquired a right of occupancy, to the detriment of the rights of the actual proprietors of the soil guaranteed by the Permanent Settlement. This is the interpretation of that law by some of the highest judicial authorities, notably Sir Barnes Peacock, late Chief Justice of the Bengal High Court, and now a Member of Her Majesty's Privy Council, and Sir Richard Garth, the present Chief Justice of Bengal; but this innovation has been the law of the land for nearly a quarter of a century, and although it involves gross injustice to your petitioners and the class they represent, they would submit to it as they have hitherto done. By far the largest number of tenants in Bengal have acquired a right of occupancy, and they do not wish to take it away. They, however, submit that it would be the height of injustice if the right of occupancy would be further extended in the manner proposed in this Bill It is now declared that any tenant, if he holds any land in any village or estate for twelve years consecutively, though the land so held by him at different times may have been different, shall be deemed to have become a settled tenant of that village or estate, and to have acquired the right of occupancy, though the last plot in which the right will accrue, may have been held for a year or even for a day, and may exceed ten times the quantity previously held by him. The right of occupancy is also extended to tenants of the private domains of the landlord, unless there be a lease for a fixed period. Even as regards tenants-at-will, the provisions are so fenced with restrictions by providing compensation for disturbance, that they will virtually become tenants with permanent occupancy right. The extension of the occupancy or tenant right in this arbitrary manner, without any

compensation to the landlord, will be a serious encroachment upon his proprietary rights, and will be a deliberate infraction of the guarantees under which he has invested his capital in land.—Indeed, it will have practically the effect of redistributing property in land on a new basis."

In the "Notes," the zemindars make the following remarks under Sections 45 and 47 :—

"Section 45. The 'settled ryot,' as defined in this Section, is very different from a 'resident ryot' familiar to the Indian lawyer. The rights given to such a ryot by Sections 57 and 61 are most objectionable. The latitude which sub-section 3 gives to the acquisition of the right is also very objectionable. In joint Hindu or Mahomedan families, the number of co-sharers, male and female in a ryotty holding is usually very large. Should all and every one of them acquire the rights of a settled ryot ? Though some of them may be living for years, and in fact presumably far away from their ancestral homes.

"Section 47. A ryot who has held on the 3rd of March 1883, even for a few days, a large quantity of land in a village, would, by this Section, any contract to the contrary notwithstanding, acquire a right of occupancy in respect to that land, if he or his predecessor had held even a *katta* of land in that village or in the estate to which it appertains, for a period of 12 years. This is a most unjust and uncalled for invasion of the rights of landholders. The rule for the acquisition of the right of occupancy, laid down in Section 6, Act X of 1859, has been declared by eminent judicial authorities to be an encroachment on the proprietary rights of landholders. It was at first proposed to apply the rule only to resident ryots, and it was only on the recommendation of the

authorities of the North-Western Provinces, that it was extended to all classes of ryots, but, with a view to palliate the wrong thus done to zemindars, a section, (Section 7), was enacted, which gave the landholders power to prevent the accrual of the right by taking proper engagements from the ryot. It is admitted that that law has succeeded in giving fixity of tenure to a large majority of ryots. Where, then, is the necessity of this fresh and unjust inroad into the rights of the zemindars? The statement, that landholders have hitherto prevented the accrual of the rights of occupancy by not allowing their ryots to hold the same land continuously for a number of years, is, in the main, incorrect and unfounded. If the practice has grown, as has been stated, in some estates in Behar, the landholders are not to blame for it. They have done merely what is not wrong, but what they are expressly authorized by law (see Sections 7 and 9, Act VIII of 1869) to do in order to protect their own interests. It should be remembered that the practice did not affect old ryots, i.e., those who have acquired rights of occupancy, and that when the landholders would legally prevent the accrual of the right of occupancy by taking proper engagements from their ryots, this constant shifting of cultivation may be due to other causes, the conditions of soil for example, than the desire of the landholder to gain his own object. The Secretary of State has, it is true, given his sanction to a revision of the law relating to right of occupancy merely, though not quite in the way proposed by this section, but it is no wonder that such sanction has been given when it is recollected that the opinions of high and experienced officers of Government, of men like Lord Ulick Brown, Mr. J. Monro, and others, were kept in the back ground, and

isolated opinions of a few officers, who are wedded perhaps to particular pet theories, were held up to His Excellency as evidence of the condition of the ryots and of the conduct of the land-holders."

The zemindars have appealed to the opinions of Lord Ulick Brown and Mr. Monro, as certificates of good conduct. But in the following will be found a certificate of a quite different nature given to them by Sir Ashley Eden, who was no enemy to them, and to whom they voted a statue out of pure love and gratitude.

"But nothing is so marked in the memorials from zemindars which have come before this Government as their rooted hostility to the extension, and even to the maintenance, of the occupancy-right. At one meeting of zemindars when it was asked whether it was expedient to confer rights of occupancy on resident ryots with regard to land held by them for three years, the following resolution was unanimously adopted. 'This concession is strongly deprecated. At present landowners prevent the growth of occupancy rights by granting leases for five years only, so that a ryot shall never hold at the same rent for 12 years. In practice this last expedient is found sufficient, as the Courts find claims to occupancy rights not proved unless the ryot can show that he has held the same land for 12 years by proving that he paid the same rent. Under the proposed law, zemindars would not suffer ryots to remain for three years.' This, somewhat naive, confession shows the policy that is now being followed both in Bengal and Behar. 'In Bengal,' remarks a Collector who knows both Bengal and Behar, 'all proprietors and tenure-holders wish to see the present law changed. They desire two things,—the limitation or destruction of occupancy or other ryot's rights, and increased facilities for

enhancing rents, whether directly or under cover of a law for the summary realisation of rent.' In Behar, on the other hand, the landlords are, in the judgment of this officer, (though others differ from him here) content with the existing law which they have been able to work to their own advantage. There are grounds for believing that the lessons of Behar zemindary management have not been lost upon the landlords of Bengal. If the law remains as it is, it is the opinion of very competent observers that in ten years' time there will be few occupancy ryots left. Some experienced officers are of opinion that their extinction is going on rapidly and surely." (Bengal Government Report, Vol. I. p. 11.)

Sir Ashley Eden, therefore, arrived at the following conclusion, regarding the security to be afforded to the ryots:

"The Lieutenant-Governor considers it essential to the agricultural prosperity of the province that the great mass of the cultivators should not be reduced to the condition of mere tenants-at-will. He entirely concurs in the following remarks of the Famine Commission as to the direction which rent-legislation in Bengal should take.

"'We can, however, feel no doubt that in all the provinces of Northern-India and particularly in Bengal, it is the duty of the Government to make the provisions of the law more effectual for the protection of the cultivators' rights. This opinion is primarily based on the historical ground that they have a claim, as a matter of strict justice, to be replaced as far as possible in the position they have gradually lost; but it may also be supported on the economical ground that, in the case of these large cultivating

General object to which new legislation should be directed.

classes, security of tenure must have its usual beneficial effect ; and that, as a rule, the cultivators with occupancy rights are better off than the tenants-at-will. Wherever enquiry has been made, it has been found that, in all matters relating to material prosperity, such as the possession of more cattle, better houses, and better clothes, the superiority lies on the side of the occupancy tenants, and the figures in the preceding paragraphs also show that, as a rule, they hold larger areas of land. Where the sub-division of land among tenants-at-will is extreme, and in a country where agriculture is almost the only possible employment for large classes of the poeple, the competition is so keen that rents can be forced up to a ruinous height, and men will crowd each other till the space left to each is barely sufficient to support a family ; any security of tenure which defends a part of the population from that competition must necessarily be to them a source of material comfort and of peace of mind, such as can hardly be conceived by a community where a diversity of occupations exists, and where those who cannot find a living on the land are able to betake themselves to other employments.

"'It is only under such tenures as convey permanency of holding, protection from arbitrary enhancement of rent, and security for improvements, that we can expect to see property accumulated, credit grow up, and improvements effected in the system of cultivation. There could be no greater misfortune to the country than that the numbers of the occupancy class should decrease, and that such tenants should be merged in the crowd of rack-rented tenants-at-will, who, owning no permanent connection with the land, have no incentive to thrift or to improvement. It

The enlargement and strengthening of occupancy right.

is desirable for all parties that measures should be framed to secure the consolidation of occupancy rights, the enlargement of the numbers of those who hold under secure tenures, and the widening of the limits of that security, together with the protection of the tenant-at-will in his just rights and the strengthening of his position by any measure that may seem wise and equitable. The suggestions which we now proceed to make for alterations in the existing law, or in the system of administering it, are based on this view, and have for their object the ends thus indicated.'"

(Bengal Government Report. Vol. I, p. 11).

The necessity for the preposed measure is fully set forth in the letter of the Bengal Government to which we have already alluded.

The difinition of a "settled" ryot as contained in the Bill further justified.

"Returning to the objections which have been raised to the definition of a 'settled ryot', the Lieutenant-Governor starts with the fullest acceptance of the principle enunciated by the Famine Commission, that it is "desirable for all parties that measures should be framed to secure the consolidation of occupancy rights, the enlargement of the numbers of those who hold under secure tenures, and the widening the limits of that security." This principle finds a fitting recognition in the constitutional acknowledgment made by the Bill that the proprietor's interest in the soil is not an absolute or exclusive one, but that, as Lord Hastings' Government admitted in their letter of the 7th October 1815, to the Court of the Directors, the permanent cultivator has an 'established hereditary right in the land he cultivates, so long as he continues to pay the rent justly demandable from him with punctuality.' This

position has the Lieutenant-Governor's fullest approval, as being in accordance with the ancient custom of the country, and never superseded by any act of active legislation. The customary law of these provinces being such, the question remains whether the village in which the cultivator lives should limit and bound his rights, or whether, having once been admitted by the landlord to permanent cultivation in one part of his estate, he should not be deemed entitled to similar privileges in other portions which lie outside the village in which he may actually reside. To the question thus raised, the Lieutenant-Governor would give an affirmative answer. The interests of the community require as large an extension of fixity of tenure as is consistent with the rights of the zemindars, and the only rights which can be conceded to zemindars upon the point are those of receiving fair rents, and of assuring themselves that the persons they admit to permanent residence and cultivation within their estates are persons of good character and likely to make solvent, industrious tenants. Once assured on these points, the proprietor of an estate can have no reasonable justification for refusing to an approved tenant cultivating rights in one portion of his zemindari which he has granted to him in another. It must be remembered that the proposal under consideration has been brought forward in consequence *of the evils caused by the action of the zemindars themselves in shifting their ryots from land to land to prevent the accrual of a right which the earliest Regulations recognized, and Act X of 1859 distinctly affirmed.*

"On this question the Lieutenant-Governor would say that perhaps too much importance has been attached to the fact that the term *Khudkhast* connoted, or is believed to have connoted, the idea of residence in the village

in which the ryot's holding lay. The early discussions upon Act X of 1859 show that residence, though generally, was not always a condition of occupancy ; and at any rate it should be borne in mind that we are not now seeking to rehabilitate the *Khudkhast* ryots in exactly the same status which obtained in 1793. The reasons for this are obvious. The period between 1793 and 1859 was one in which the power of the landlord had grown beyond controllable limits, and exercised an almost paramount influence dangerous to public stability and order. It was in such a state of things that the law of 1859 was passed ; and, as regards the position of the main body of the cultivating classes, the doubts and difficulties of the situation (which had arisen from the effacement of the ryots' rights and privileges by unchecked zemindari influence and independence) were solved by the declaration of a 12 years' occupancy as evidence of prescriptive title, that term being adopted in the Act absolutely and *without reference to residence.*

"Even if Act X of 1859 had not thus introduced a new departure in the land law of Bengal, the changes of a century, and the indeterminate limits of villages at the time of the permanent settlement, forbid that we should go back now to the consideration of a state of things which existed nearly a century ago. It is, in fact, impossible to do so, for the circumstances and conditions of the country are different; and all we can hope to do is to place the settled ryot of to-day in a position analogous to that occupied by his prototype. One of the privileges of the *Khudkhast* ryot was to hold fresh land in the same village on the same tenure as the old ; and as, in those times, there was a large margin of waste in all villages, the resident cultivator had the fresh land at his door. There is now but little margin of waste

in any village of the settled districts, and therefore the ryot, if he wants to add to his holding, cannot always succeed in doing so. That he should however, if successful in his quest (and he can only succeed with the consent of his landlord), hold such additional land in the same estate, by the same title as his orginal holding, is only a rational development of an old customary law of the country to suit modern wants.

Dfinition of a settled Ryot further considered.

"In considering all that has been urged against the definition which the Bill gives of a settled ryot, Mr. Rivers Thompson regrets to find but little evidence of a conciliatory spirit on the part of zemindars. They represent, in all their statements upon the question at issue, that they, of all people, are the most anxious to retain good ryots upon their properties, but when an attempt is made to translate their expressions of good-will towards their tenantry into positive law, in accordance with the necessities of the case as demonstrated by accumulated proof, the landlords assert their right not to be bound by any law. This question of definition of a settled ryot is a case in point. It is impossible to believe that in early times, as population grew and the margin of waste land in a village diminished, a landlord's approved tenants would not have the preference of such fresh lands as existed in neighbouring villages of the estate, or that they would hold such lands on a less secure title than attached to their lands in the parent village. It must also be remembered that, owing to the disintegrating influence of time and of the law of inheritance, the village area of to-day is frequently much smaller than the village area of a century ago; and to restrict the rights of the settled ryot to the smaller area would

not be just to him nor advantageous to public nor in accordance with the practice which has grown up under Act X of 1859. All experience shows that the settled ryot of a village, who rarely holds more than a few acres of land, and who is therefore too poor to afford two homesteads, or any care-taker but himself and children, *can never go far from his home for fresh land.* This can be asserted with positive certainty of all those ryots who pay less than Rs. 20 annual rent, and they number 8,925,000/₈ out of the 9,752,000 ryots, who, according to the Famine Commissioners, cultivate the soil of Bengal. It may be asserted, if not as positively, still with much probability, of 682,000 ryots who pay rents from Rs. 20 to Rs. 50. The residuum of ryots who may thus hold land in two villages is small; and it is not to the public benefit to discourage this substantial class of ryots; while even if a ryot of that class went 20 miles away from his village for fresh land as some zemindars fear, he will still be well known to his landlord, who, after *all, may refuse him the land* The Lieutenant-Governor must then support the definition of a settled ryot given by the Bill.

" While, however, the Lieutenant-Governor thus agrees with one part of the definition of a settled ryot, he desires to represent an objection to Section 45 as it stands, in that it throws on the ryot the burden of proving 12 years' occupation. This provision will in most cases cause delay and inconvenince, and, in some cases, must result in injustice. It is here a misfortune that Bengal is so absolutely destitute of a record of rights. If we had such a record, the position would be without difficulties, but in

Objections to throwing on resident ryots onus of proving the 'settled status.'

its absence there is much reason to fear continuous litigation to establish or disprove claims to a right of occupancy. When under the provisions of this Bill a record of rights is established, disputes will be impossible. But, in the long interval before that can be accomplished, we must seek, by some addition to the Section, to meet the difficulty, and the only way which presents itself to the Lieutenant-Governor's mind is the adoption of the principle that the fact of residence or actual occupation, which can be readily ascertained, should afford a rebuttable presumption that the ryot is entitled to be classed as a settled ryot. If the presumption be unfounded, the zemindar can readily rebut it, for all the materials of proofs are in his office or *sherista*. No one can doubt that, in the vast majority of cases, the presumption will not be rebuttable, and that the zemindars will not question it; and thus an enquiry into exceptional cases will alone be needed to secure to the country at large the peace and contentment which must attend on the well-defined *status* of the bulk of the agricultural population. On the other hand, an enquiry into the *status* of all resident cultivators will last a generation, and will lead to unrest, if not litigation, which should be avoided.

Necessity for barring freedom of contract.

"Finally, the Lieutenant-Governor has no doubt whatever as to the necessity of that provision which disables the ryot from contracting himself out of the law. On this point there is a general agreement of opinion that, in view of the power of the zemindar and the ignorance and weakness of the ryot, contract should be disallowed. It must not be forgotten that the provisions on this subject contained in the Bill are in harmony with the principles of the

Permanent Settlement Regulation (VIII, 1793), which, in Sections 57 and 58, subjected to the Collector's superivision and approval not only the *forms* of leases, but also the *rates* of rent recoverable under them."

We think the arguments advanced in the above in support of the proposed extension of occupancy right are very strong and exhaustive, and the recommendation of the Lieutenant-Governor to make residence or actual occupation a sufficient ground for presuming that the ryot residing or occupying is entitled "to be classed as a settled ryot," is a very proper one, as an enquiry into the *status* of all resident cultivators will lead to unrest and litigation.

The zemindars have, it will be seen, laid much stress on the circumstance that in the opinion of Sir Barnes Peacock and Sir Richard Garth section 6 of Act X of 1859, was an encroachment on their rights under the Permanent Settlement, according to which, they allege only "the resident hereditary tenant had fixity of tenure." We have shown that the word "hereditary" is no-where to be met with in the Permanent Settlement Regulation, which speaks of only the *khood-kasht* or resident ryot. Under the Permanent Settlement all khood-kasht or resident ryots enjoyed the right of occupancy. It is under the Sale Laws, *subsequently passed* that the right was confined to the *khood-kasht kadeemee* or *resident* and *hereditary* ryots.

At the time that Act X of 1859 was passed the state of things was as follows :—

I. In estates which *had not been sold* for arrears of revenue, under Act XII of 1841 or Act I of 1845, all *khood-kasht*, or resident ryots enjoyed the right of occupancy. The *pye-kasht* or non-resident ryots had no right of occupancy.

II. In estates which *had been sold* for arrears of revenue under Act XII of 1841 or Act I of 1845, only the khood-kasht kadeemee or resident and hereditary ryots enjoyed the right of occupancy. The number of states sold under these laws between 1841 and 1859 could not have been large.

If Act X of 1859 by extending under the 12 years' rule the right of occupancy to pye-kasht ryots generally and to other than khood-kasht kadeemee ryots of estates sold under the Sale Laws of 1841 and 1845 made an encroachment on the rights of the zemindars it made no less an encroachment on those of the khood-kasht ryots of estates that had not come under the operation of the Sale Laws. While quoting Sir Barnes Peacock in support of their case the zemindars have failed to notice, that that learned authority also held that "Act X of 1859 was not intended to debar ryots from availing themselves of any right to which they can prove themselves to be legally entitled by custom or prescription" (B. G. R. Vol. I. p. 82). That custom, in ancient times, was in favour of the right of occupancy being general will appear from the extracts made by us from the Despatch of the Court of Directors and the Minute of Sir John Shore. (*Vide* pp. 35-37 ante).

As for the weight to be attached to the opinion of Sir Richard Garth it is to be borne in mind that two of his colleagues, Mr. Justice Cunningham and Mr. Justice O'Kinealy, entirely differ from him. If it had been a case which these three Judges had judicially to decide the opinions of the Junior Judges would have prevailed. But the opinion of Mr. Justice O'Kinealy derives additional weight from his having a long and varied experience of the Mofussil districts of Bengal which the Chief Justice has not.

The zemindars have pleaded in justification of their conduct in not allowing the right of occupancy to accrue to ryots, that they were empowered to do so under section 7 of Act X of 1859. But it would be quite inconsistent with the general spirit pervading that Act to suppose that it meant that the zemindars should use it as an engine for the destruction of occupancy right.

The zemindars themselves have admitted that about 90 per cent. of the ryots at present possess the right of occupancy. Our experience derived from the management of private estates and Khash Mehals has made us believe that it would be difficult to find even one out of a hundred ryots who does not possess the right of occupancy. A ryot will not change his paternal abode unless driven to do so by the oppressions of his land-lord, and, as for changing the fields he cultivates, a ryot will, in these days of keen struggle for existence, take up new lands if he can get them rather than give up old ones. The effect of the proposed measure will, therefore, be not so much *to further extend the right of occupancy as to prevent its destruction* by unprincipled zemindars.

III. *Transferability of Occupancy Right.*

No part of the Bill, has met with such severe criticism as section 50. Clause (e) of this section gives power to an occupancy ryot to sub-let the land of his holding or any part thereof and clause (f) to transfer, and bequeath by will, his interest in the land, subject to the rights reserved to the land-lord by the Act, in the same manner and to the same extent as other immovcable property. It has been alleged that these proposals are innovations and that they will not only be disadvantageous to the zemindar but will prove also

ruinous to the ryot. Following the procedure adopted by us in the discussion of (1) the Distinction proposed to be made between Khamar and Ryoti land, and (2) the proposed extension of Occupancy Right, we shall in the first place lay before our readers the objections urged by the zemindars in their petition to Parliament, then the opinions of the Bengal Government and of certain high officials under it and lastly our own opinion on the subject. We shall begin with the Transferability of Occupancy Right and then successively, take up the landlord's right of Pre-emption and the ryot's right to Sub-let.

The Third ground of objection taken under para : 9, of the zemindars' petition to Parliament runs as follows :—

"III. The tenant-right in Bengal, wherever it has existed, has always been heritable, but not transferable. Even Act X of 1859 did not make it transferable. But it has become transferable in some parts of the country with the mutual consent of the landlord and tenant The growth of this custom, if desirable, may fairly be left to the natural operation of economic laws. But to force it by a legislative enactment would be alike detrimental to the proprietary rights of the landlord and to the material well-being of the tenant. The landlord will then cease to be the lord of the soil, which he has inherited or purchased by paying market value for it ; he will lose his inherent and just right of choosing his own tenant ; although directly liable to the State for revenue under the stern sunset law, by losing his hold upon his tenantry under this process of transfer of tenant-right without his consent, he will be driven to despair in the collection of his rent, and consequently to ruin. On the other hand, the tenant, by acquiring the

new freedom of sale, will from excessive Government taxation, adverse seasons, thriftlessness and other causes, find a facility which will inevitably encompass his ruin, as has been the case in some of the temporarily settled districts of the country where the transferability of the tenant-right is recognized, and where special laws have become necessary for the relief of the distressed agriculturists. Small capitalists, mostly money-lenders, will take the place of the present agriculturists, who will be reduced to mere day-labourers on their expropriated lands."

In the "Notes" appended to the petition, the zemindars have made the following additional remarks on this subject :—

"Section 50 (*f*). The evils incidental to a rule for the free sale of ryoti holdings in this country have been already described with reference to section 25. If the free sale of permanent holdings be objectionable, how much more so would be the sale of simple occupancy rights held by persons who are in a majority of cases very poor, and who have no resources to fall back upon in seasons of agricultural distress. The result of such a rule would be, that within a few years the holdings will change hands, a number of middlemen will come into the possession of the greater part of the holdings of every village while the original ryots themselves, who are the objects of so much tender solicitude on the part of the Legislature will be reduced to the condition of day labourers or of under-tenants paying rack-rents to their superior holders "

In addition to the above arguments of the zemindars, those advanced under the present "Head" by Mr. Henry Bell, in a pamphlet recently published by him, deserve notice in this place.

"It has been," says Mr. Bell, "already pointed out that the occupancy ryot at the time of the Permanent Settlement forfeited his right of occupancy if he mortgaged or sold the land. It was also expressly declared by the Regulations that he had *no right of property or transferable possession* in the soil.* But Mr. Ilbert's Bill gives the ryot the power of selling or transferring the land without the landlord's consent. No restriction whatever is imposed. The purchaser need not even be a cultivator. He may be a land-speculator, a money-lender, or an insolvent. But whoever he is, the zemindar is bound to accept him as his tenant. And yet Lord Ripon says he is only restoring the ancient land law of the country. A transfer under that ancient law involved a forfeiture. If the right is now given to the ryot, it can only be given at the expense of the zemindars. The zemindars altogether object to the concession of such a right. They say and not unreasonably, that it will seriously depreciate the value of their property. The class of people who will purchase these occupancy rights in Bengal are the mohajans or money-lenders. These people will not cultivate themselves, but will sub-let to an inferior class of tenants. There will thus be introduced a middle-man between the landlord and the actual cultivator. The landlord ought surely to have some voice in the selection of his tenants. A notorious robber or dacoit may buy up these occupancy rights and locate himself in the heart of the estate to the consternation of the landlord and tenants alike. The owner may see his property ruined by bad cultivation or his peace and quietness may be destroyed by his bitterest

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* Reg. VII, 1799, 3, 15, C. 17.

enemy settling in his midst, and yet he will be powerless to interfere.

"To the occupancy ryots themselves the concession of free sale will be a most dubious advantage. Indebted as most of them are to the money-lender, in a few years they will be sold out of house and home. At present their land is safe from the money-lender's grasp. That he cannot seize, and their moveable property, is not worth seizing. He is, therefore, obliged to assist them in times of difficulty, for his only hope of recovering his money is the prospect of a good harvest. He is therefore as much interested in their prosperity as they are themselves. But make their land saleable, and he will have no need to wait for a future harvest ; the land will satisfy his demand, and what matters it to him if the ryot is reduced to beggary. We shall have in Bengal, what we had in the Deccan from a similar cause, a peasantry reduced to a hopeless state of poverty and destitution.

"It is idle to expect that these occupancy rights when sold will be purchased by cultivators. They have not as a body the capital to purchase such rights. One result must inevitably follow. In a few years the cultivating occupancy ryot will have disappeared, and in his place will be a ryot absolutely without rights, holding as a tenant-at-will under a capatalist who has bought up the land as a mere speculation."

(The Restoration of the Ancient Land Law or The Ilbert Bill No. 2. By Henry Bell. pp. 38-40.)

The arguments contained in the above extracts from the zemindars' petition and from Mr. Bell's pamphlet amount to these:—

I. At the time of the Permanent Settlement a ryot had no power to sell or mortgage his occupancy right.

A transfer under the ancient law involved a forfeiture. The tenant-right in Bengal, wherever it has existed, has always been heritable, but not transferable. The proposal to make the occupancy right transferable will deprive the landlord of his inherent and just right.

II. The occupancy right has become transferable in some parts of the country with the mutual consent of the landlord and tenant.

III. The class of people who will purchase these occupancy rights in Bengal are the mohajans or money-lenders, who will not cultivate themselves, but sublet to an inferior class of tenants. Thus a middle-man will be introduced between the zemindar and the tenants. The right of free sale will prove ruinous to the ryots.

Our replies to the above will be found below in the order in which the arguments of the zemindars have been stated :—

I. We are not a little surprised to see that Mr. Bell, a lawyer, should have satisfied himself as to what the ancient law on this subject was, on the mere statement of Sir John Shore, without taking the trouble to verify that statement by a reference to the law itself. The case would have been different if it had been the statement of a mere *fact*, where the testimony of such an authority, as Sir John Shore, would undoubtedly carry great weight. But as it is a *question not of fact but of law* one would have expected that a lawyer-advocate on behalf of zemindari interests should have strengtheued his arguments by extracts from the standard works on Mahomedan Law and the Edicts of the Emperors, which carried the force of law. But Mr. Bell has done no such thing. A careful study of the Mahomedan Law, as it was administered in India, would have convinced him that the *cultivator of the soil paying the kheraj*, whether it was

kheraj mowuzzuff or *kheraj mokasima*, was recognised as the actual proprietor thereof and was "vested with indefeasible right of property." He could *transfer his land by lease, mortgage, sale or gift.* The ancient law is, surely, not the *ipse dixit* of Sir John Shore, as Mr. Bell believes it is, but the law under which the country was governed by the Moguls. The law might have, sometimes, been violated with impunity by the strong against the weak, as is often the case even under the present Government, but *that does not at all affect the question as to what the law was.*

Mr. Bell has referred to clause 7 (not 17 as is stated in the foot note of his pamphlet) Section 15 of Regulation VII of 1799, and has deduced from it the inference that "it was expressly declared by the Regulations that the occupancy ryot had no right of property or transferable possession in the soil." But the fact, that the clause and section cited above contained an express reservation in favour of *established usage*, has been, unfortunately for the ryots, lost sight of by the zemindar's present advocate. If Mr. Bell will carefully read clause 7, he will find, that where according to *established usage* a tenure, including an occupancy tenure, *was transferable* before the enactment of Regulation VII of 1799, it continued transferable also after the passing of it. But if our readers will turn to Mr. Bell's "Landlord and Tenant," published long before the present controversy arose, they will find that what he now advocates is quite different from what he himself laid down as the law.

We have seen that in the petition, dated 1851, (see p. 41, ante) signed by such distinguished personages as Baboos Shambhu Nath Pundit, Hurrish Chunder Mookerjea and others, it was stated "that the interest of a khoodkasht tenant is transmissible by sale, gift, and suc

cession, and that his right of occupancy does not terminate by any of those acts or omissions which determine the rights of lease-holders generally." A corroboration of the truth of the above statement will be found in the following passage from a speech delivered in the Bengal Council by Mr. Mackenzie in 1878:

"The revenue system of Bengal to a great extent withdrew from the cognizance of Government officers the actual relations between the zemindars and their under-tenants, and we have no means of tracing accurately the history of tenant-right during all the years from 1793. There is, however, a mass of evidence with which I shall not trouble the Council, especially in connection with discussions regarding the effect of revenue sales, all tending to show that in spite of the way in which Government neglected him—in spite of *Haftam* and *Panjam*, and many other regulations in which Government, fearing for its revenue, ignored his customary rights,—in spite of all the grinding of his zemindar,—in spite of Act X. and its provisions for enhancement and eviction, the resident cultivator has maintained even to the *present day a practically permanent interest in his holding, which he has in nearly every district of Bengal been able to sell and transfer.* I find in the minutes of the High Court Judges upon the working of Act X (written in 1864) the following passage from the pen of Mr. Seton-Karr:—'That ryottee tenures of all sorts are constantly attached in execution of decrees of the revenue and judicial courts; that such holdings, whether of tenants with absolute and hereditary rights or of tenants with mere rights of occupancy, are put up to sale by scores and hundreds all over the country, is a fact that admits of no question whatever. It is equally certain that they have a positive marketable value and often change hands

by private transfer—sometimes with the consent of the zemindar, and sometimes in spite of all his opposition.' I hold in my hand returns of sales under civil court decrees, which show that in every district in the Lower Provinces sales of occupancy tenures have been effected without dispute." (Bengal Government Report. Vol. I. p. 124).

II. The second allegation of the zemindars is to the effect that in some places where the occupancy right has become transferable, it has been so with the mutual consent of the landlord and tenant. This assertion altogether ignores the possibility of such transactions being regulated by established usage or custom independent of any consent that the zemindar may or may not give. That the custom of free sale of the occupancy right is almost universal throughout Bengal and Behar will appear from the following extract from the Bengal Government's letter dated the 27th September 1883 from which we have already quoted.

Transferability of occupancy right by sale.

"There can be no doubt that the questions of free sale and subletting are intricate and difficult, and that the welfare of the ryots in these Provinces is greatly dependent on a true solution of them. The key, however, to such solution is in the Lieutenant-Governor's opinion, given by the Famine Commission when they say: 'Though, on the whole, we regard the general concession of the power of sale of these rights to be expedient, and ultimately almost unavoidable, the immediate course to be followed by the Government must, no doubt, be to a great extent governed by local custom. Where the custom has grown up, and the tenants are in the habit of selling or mortgaging their rights in land, it should certainly be recognized

by the law; but where it has not, it may be questioned whether the law should move in advance of the feelings and wishes of the people. The question, then, which the Lieutenant-Governor has to answer is this: Has the custom of free sale of occupancy rights attained such a growth and stability throughout these Provinces that it may now be safely recognized by law?

"Having given the matter his most careful attention the Lieutenant-Governor believes that the weight of argument and fact is in favour of legislation in the direction indicated by the Bill; and he accordingly would recognize the transferability of the ryot's occupancy right throughout these Provinces. It may be accepted that freedom of transfer was not an incident of the khudkhast ryot's holding; and the Lieutenant-Governor is not unmindful of the fact that in Jhansi, in the Deccan, to some extent in the Sonthal Pergunnahs, and possibly in other parts of India, free sale has had evil results on a thriftless peasantry. If he had to deal with the question as one of mere theory, Mr. Rivers Thompson would probably not remain uninfluenced by its historical aspect, and by the dangers of vesting a population with transferable rights of property before habits of thrift among them had been fully confirmed. But the Lieutenant-Governor has here to deal with a question, not of theory, but of actual practice. It is here not a matter of 'introducing a source of temporary prosperity,' and encouraging an 'increase of thriftlessness on the one hand, and of greed on the other,' as was the case in the Deccan, but of confirming and recognizing a growing custom, to which the needs of the country have spontaneously given birth; and which has so far produced no evil results.

"It is true, indeed, that the Behar Land-holders' Asso-

ciation in the petition to Parliament which has been already noticed, assert that in Behar there is no such custom (as sale of occupancy rights), nor is it even pretended that there is such a custom.' That assertion, however, is certainly incorrect. It may, indeed, be said that if one point had been during these discussions more strongly insisted upon than another by Behar officers, it was this—that the transferability of occupancy rights was a growing custom in Behar, of which every man in the province, who knew anything of agrarian matters was well aware. On page 370, Vol. II of the Rent Commission's Report, statistics are given showing that 410 occupancy rights, exclusive of 445 guzasta tenures, were sold in Behar courts, in execution of decrees, during the single year 1878-79. That fact alone, which should have been within the knowledge of the Association, sufficiently refutes the assertion made in the petition to Parliament; but in order still further to demonstrate its inaccuracy, as well as to furnish the basis for future argument in the course of this letter, the Lieutenant-Governor will quote the following statistics of private sales of occupancy rights from the Appendix to the published Report on the Registration Department in Bengal for 1881-82, which is the latest authoritative information available on the subject :—

Statistics of sales of occupancy right.

"These statistics prove that not only in every district of Behar, but in every district of these provinces (except Darjeeling, where altogether exceptional conditions prevail) occupancy rights are now more or less freely sold as a matter of private agreement without objection on the landlord's part, and we know from independent evidence that many of the districts in which the custom seems most firmly established, are those in which ryots are best off. It is true that about 16 per cent. of the purchasers of occupancy rights are mahajans; and this is a fact which has created misgivings as to the ultimate effect of formally recognizing the transferable character of occupancy rights. That is a danger, however, for which it is believed some provision has been made in the earlier portions of this letter, and with which I am to deal at greater length further on. Here I am to observe that it is now quite too late for landlords to object to a custom which already seems, without any opposition on their part, to have taken root in the agrarian economy of the Province.

"Although, however, landlords may be out of court in their objections to the recognition of the freedom of sale of occupancy rights, this question remains: Is it desirable to give to the custom generally the formal sanction of the law, and if not generally, then to what extent? The Lieutenant-Governor has no doubt whatever that the law may recognize free sale throughout Bengal, and if he had doubts on the question as it affects Behar, those doubts would have been removed by the unanimity of impartial local opinion in favour of the proposal, and by the evidence afforded not only by the Registration statistics referred to above, but by the following figured statement of the extent to which occupancy rights in Behar were sold

Sales of occupancy holdings in the districts of the Patna Division, in execution of decrees during the year 1881, 1882 *and* 1883.

Districts.	1880.		1881.		1882.	
	Number of holdings.	Selling price.	Number of holdings.	Selling price.	Number of holdings.	Selling price.
		Rs.		Rs.		Rs.
Patna	72	9,627	71	7,667	97	14,456
Gya	92	8,076	32	1,209	57	4,875
Shahabad	696*	11,988	924*	23,933	1,174*	10,722
Sarun	247	3,610	291	3,150	460	13,565
Chumparun	132	2,416	145	2,310	141	2,559
Durbhunga	843	13,463	1,628	15,286	1,693	22,406
Mozufferpore						
Total ...	2,082	49,180	3,091	53,555	3,622	68,583

* Including Guzastas.

during the last three years in execution of decrees in the various Civil Courts :—

"It may be added, that in the Monghyr and Bhaugulpore districts, which, though not a portion of the Patna Division, are usually considered portions of Behar, 91, 184, and 102 occupancy holdings were sold in each of the above years respectively.

"It will thus be manifest that occupancy rights are now saleable in every district of Behar both as a matter of private agreement, and compulsorily in satisfaction of debts; but even had this not been so, it would have been difficult to justify, on one of the main principles of the Bill, any distinctive practice in two parts of the same Province. On a review of the whole question, then, the Lieutenant-Governor cannot but conclude that the balance of argument is in favour of extending to Behar the recognition of the right, which the circumstances of Bengal Proper not only justify, but demand. As observed by the British Indian Association in 1878, the recognition of the right of transfer would create a direct interest in the improvement of the soil, would stimulate cultivation, would tend to establish a substantial peasant proprietary, would give a valid security for the realisation of the landlord's rent, and, by increasing the marketable value of the land, would lower the rate of interest when the ryot has to borrow. These are all advantages which cannot be lightly foregone, and Mr. Rivers Thompson therefore does not contest the wisdom of this portion of the Bill, the more so, as its operation would be made the subject of watchful supervision."

To those who allege that the transfers shown in the deeds registered by the Registration Department are mere paper transactions, our answer is, that the number of years' purchase is a sufficient test of the value of the right transferred, and judging by that test, we see in the

statement quoted from the Bengal Government letter, that with the exception of one or two districts, the average value exceeds five years' purchase, and that in the case of the majority of the districts, it ranges between nine and twenty years' purchase, and that in the case of some of the districts it is as high as fifty years' purchase or more, nor is the number of transactions, especially in the districts of Bengal Proper, including Maldah and Purnea, at all inconsiderable. In several of the districts it ranges between 1,000 and 4,000. Are we to believe that in all these cases the ryots previously obtained the consent of the zemindars before selling their rights?

To one carefully studying the ancient law as it prevailed in the country, when the Government passed from the hands of the Mogul into those of the English, the *present general existence of the custom of transferring the right of occupancy will not appear to be a new growth fostered by modern English ideas of peasant proprietorship, but as the relic of what was once universally established by law.* Since the time of the Permanent Settlement, the tendency of the Legislature has been to favour the Zemindar more than the ryot, and what remains of the ancient custom is but the survival of the fittest.

III. We come now to the consideration of the last argument advanced against the expediency of making the right of occupancy transferable, namely, that the class of people who will purchase these rights will be the Mahajans or money-lenders, who will not cultivate themselves but sublet to an inferior class of tenants, having no rights; so that the right of free sale will prove ruinous to the actual cultivators of the soil. Now, with reference to this, we have, first the information

compiled from the records of the Registration Department, and secondly, the opinions of officers of Government specially fitted to pass judgment in such matters.

As regards the information derived from the Registration records, a reference to the figures quoted above will show that only 16 per cent. of the purchasers are Mahajans. If the districts of Midnapore and Sonthal Pergunnahs, which show an abnormally large proportion ($\frac{1}{3}$rd) of Mahajan purchasers, be left out of consideration, the percentage for the other districts will be reduced to only 10. But it not unfrequently happens that the Mahajan of the ryot is but another ryot of the village who is *no professional* money-lender. The following extracts from the opinions of the Hon'ble Mr. Reynolds and of Mr. Nolan describe the class of persons who generally purchase *Jotes*.

The Hon'ble Mr. Reynolds :—

"The picture, which is sometimes drawn, of the land getting into the grasp of a mercantile class, unconnected with agricultural pursuits, and holding the old ryots as their serfs, is, I believe, a very incorrect one. The Mahajan is more often than not a well-to-do ryot, resident in the village, and engaged in agricultural pursuits on his own account. That men of this stamp should be able to increase their holdings by buying up occupancy rights is not much to be regretted. They are the most likely class to lay out capital on the land, to stock it properly, to introduce new staples and improved methods of cultivation. At the same time though, I believe, that the land must eventually tend to come into the possession of persons of this kind. I think it would be a misfortune if the transfer were to be other than a very gradual one."—(*B. G. R.* Vol. I., p. 271.)

Mr. Nolan, Collector of Shahabad :—

"The general rule is that the ryots cultivate their own lands with their own small capital, and where they sell their holdings, it is to others of their own class."—(*Supplement to Gazette of India*, October 20th, 1883, p. 1762)

We ourselves as Special Rate-Officer, Moorshedabad had, in our report based on local enquiry, occasion to remark as follows:—

"The Jumma-wasil papers of Gopinathpore shew that this custom of buying and selling *jotes* has been very general in the pergunnah. But though custom is thus in favor of the ryot, a legal enactment declaring its validity, will, no doubt, be productive of very great advantage, as it will prevent the litigation that occasionally crops up at present. The fear that is generally entertained, that the effect of making the right of occupancy transferable will be that such *jotes* would gradually pass into the hands of the money-lenders, is, so far, at least, as this part of the country is concerned, quite unfounded. On the other hand, I find as a fact, that all old *jotes* which have changed hands are still in the possession of cultivating ryots."—(*Supplement*, p. 1749.)

But it should, no doubt, be a matter for anxiety that the number of occupancy-mahajans, with *korfa* ryots under them, may not increase, and to this end the proposal of the Bengal Government, to limit the right of occupancy to only the cultivating ryot, *i. e.*, "one who cultivates land, or brings it under cultivation by the members of his family, or by his servants, or by hired labour, or by sub-letting a part while continuing to carry on cultivation by one or more of the preceding means in a moiety of the land," seems to us to be an improvement over the Bill, as it at present stands. But we are of opinion, that so long as any material distinction is made between the *maxima* rents

demandable from the different classes of ryots—occupancy, non-occupancy and *korfa*—the apprehension, that the actual cultivator of the soil will sometimes be rack-rented, will continue. The object being to discourage sub-letting by occupancy ryots, the rent demandable from the *korfa* ryot should be only slightly greater than what the occupancy ryot pays himself. We shall have occasion to deal with this subject in a more detailed manner, when we come to discuss the question of sub-letting.

IV.—THE ZEMINDARS' RIGHT OF PRE-EMPTION.

We have seen how the custom of transferring the right of occupancy by sale prevails generally throughout the whole of Bengal. It cannot be said, that all these transfers, or even a majority of them, were not legally valid. The zemindars or their advocates have not shown in what districts the custom was not an established one, nor have they adduced any evidence as to the cases in which their consent was previously taken by ryots transferring their rights. On the contrary, as the law at present stands, in any case in which a ryot's holding is transferable by custom or otherwise, it is not only not necessary for the ryot to take the consent of his landlord to such a transfer, but it is not even necessary that the transfer should be registered in the sheristah of the landlord.—(*Digest*, p. 39. Article 41.) Such being the case the proposals contained in sections 51 to 55 to give the landlord the right of pre-emption (1) on voluntary sale of occupancy right, and (2) on sale in execution of a decree; and to give the landlord the right (1) to take the place of the mortgagee on foreclosure, (2) to purchase in case of gift of occupancy right, and (3) to purchase where occupancy right is bequeathed; are direct encroachments on the rights at present enjoyed by

the maiority of the ryots. One would have supposed that under the above circumstances, the zemindars would thank the framers of the Bill, at least, for the privileges proposed to be conferred on them by these sections. But they have worked up their hatred towards the Bill to such an extent, that they cannot see any redeeming features in it. The fourth ground of objection in the petition to Parliament runs as follows :—

"IV. With a view to counteract the evils to the landlord referred to above, the Bill gives him the right of pre-emption in case of the sale of a tenancy, but under such restrictions as to render it nugatory. In the first place, if the landlord wishes to buy it in, he must pay a fine, as it were, for exercising his proprietary right, and if he cannot agree with the tenant as to the price, he must go to court. Even if he purchases it, he will not be allowed the same rights that will be accorded to an ordinary purchaser. After purchasing it if he choses to let it again, he must re-let it at the old rent to a new comer, who will *ipso facto* acquire the right of occupancy. An ordinary purchaser will not be bound to accord that right to his sub-tenant. So that a capitalist, who purchases an estate with a certain calculation of return, will get no *quid pro quo* for the sums he will have to lay out again, for the purchase of tenancies, simply because the tenant is invested with a new right of transferability of his holding, without, of course, paying any consideration for it. Supposing that tenants in any large numbers choose to sell their holdings, and that other tenants choose to combine, and withhold payment of rent in order to compel the landlord to their own terms, a contingency by no means unfrequent, ruin will stare him in the face, and if he has not means, he must submit to his fate, however unmerit-

ed through an act of the Legislature, the paramount duty of which is to give equal protection to all classes of Her Majesty's subjects."

The following observations appear in the "Notes" on sections 51 to 55.

"Sections 51 to 55.—The right of pre-emption proposed to be given to landholders on the sale of occupancy rights is as intangible as it would be ineffectual in palliating the wrong done to them by making the right transferable. The right of pre-emption would go for nothing, if the ryot chooses to think—it would be preposterous to assume he would do otherwise—that his holding is protected from enhancement, or that it is a permanent tenure, and one, therefore, which under section 25 is not subject to the landlord's right of pre-emption. If the landholder wishes to assert his right of pre-emption, he must go to court prepared to prove the holding liable to enhancement, or that it is a simple occupancy holding, and *that* within six months from the date of sale, gift or bequest. Nothing would be, however, more easy than for the ryot to defeat the landlord's right of pre-emption by keeping the transfer a secret from him for a period of six months, after the lapse of which the landlord would have no right or remedy whatever in respect of the transfer. The case would be much worse if the ryots combine against their landlord at the instigation of a neighbouring and unfriendly landholder, and call upon him to exercise his right of pre-emption at once in respect to a large number of holdings. Few landholders in Bengal have the means of meeting such a call. With rare exceptions, therefore, they will be placed in such a case at the mercy of their ryots. In cases of sales in execution of decrees the Bill does not provide for any service of notice of in-

tended sales upon the landlord, but he is expected to make himself cognizant of all such sales and to bid at the sales, a provision which shows further how worthless is the right of pre-emption proposed to be given to landholders. The Bill makes no provisions whatever for cases in which one or two of several joint-owners claim jointly or in rivalry to exercise the right of pre-emption in opposition to the wishes of the rest."

The remarks of Mr. Bell on the subject of pre-emption are quoted below :—

"It is true that the Bill secures to the Zemindar a right of pre-emption in case the ryot wishes to sell his land. But this right is simply delusory. The Bill which places the Zemindar under a disability to contract is equally careful to render his right of pre-emption absolutely valueless. He may buy out the ryot, but he cannot buy up the occupancy rights. If he re-lets the land, he is compelled to let it to the new tenant on exactly the same terms and at the same rent as those on which the old tenant held. Moreover, he must either give the price asked by the tenant, or bring a suit in the civil court to have the proper value ascertained. And, after all this, he literally buys nothing. The money-lender who purchases can sublet the land and dictate his own terms ; but the Zemindar can enter into no agreement ; the law re-lets the land for him, and at the old rent. It is difficult to say from what fountain of jurisprudence legislation of this sort is derived."—(*The Restoration of the Ancient Land Law.* p. 40.)

The arguments contained in the above extracts amount to these :—

(1.) The proposed right of pre-emption is simply delusory. It is absolutely valueless.

(2.) To require the Zemindar to pay the full market-value is to subject him to a fine for exercising his proprietary right.

(3.) Should a large number of ryots combine and sell their occupancy rights, "ruin will stare the Zemindar in the face."

(4.) The ryot will defeat the landlord's right of pre-emption by keeping the transfer a secret from him for a period of six months.

(5). A landlord purchasing a holding must re let it at the old rent to a new comer, but a money-lender who purchases can sub-let the land and dictate his own terms. This is most unjust and unreasonable.

Our replies to the above arguments are given below *in seriatim* :—

(1). We confess we were not prepared to hear such an argument from the Zemindar or his advocate. While the landlord is *not bound to pay the highest competitive value* of a holding in buying it, there is nothing to prevent him from *getting the highest competitive value* when he feels disposed to re-let the land to another person. Express provision is made in his favour where a ryot sells his right to another person contrary to the provisions of the law, and he is declared entitled to get the land "at a price ten per centum *below its estimated value*,"—not the value that may have been paid which may be greater than what is estimated. To one acquainted with the present very great demand for land the above reservation of right made in favour of the landlord will not appear so valueless as it has appeared to the zemindars and their advocate.

(2). But it will be said the Zemindar's proprietary right entitles him to get back the land without having to

pay any thing for it. Now, this will lead us again to the consideration of what the respective rights of the zemindars and ryots were. Instead, however, of going again to discuss this question in the abstract, we shall ask the reader to refer to the statistics of the Registration Department, which will show that whatever claims may now be theoretically advanced by the Zemindar, practically speaking, he has either entirely lost or is losing his ground. To have, under the above circumstances, the right of pre-emption, even paying the full market-value, is to have a valuable right. But as we have pointed out already the Zemindar is not required to pay the *full market or competitive value*,—he pays less than that.

(3). The Zemindar has, in working up his hatred towards the Bill, worked up the imagination, also, to such an extent, that he sees nothing but "ruin staring him in the face." He believes that in order to bring about his ruin, the ryots will in "large numbers combine and sell their occupancy rights." But if the ryots do this, they simply ruin themselves without in the least affecting the Zemindar. It is not so easy for ryots, in most parts of these provinces, to get new lands, that they will for the sake of trying the *experiment* of ruining the Zemindar, turn themselves out with their family and children, from their paternal homes to which, as we all know, they are proverbially attached. The absurdity of this argument of the zemindars is so apparent, that it needs only to be stated to be refuted.

(4). It has been said the ryot will defeat the landlord's right of pre-emption by keeping the transfer a secret from him for a period of six months. Such a statement as this could only proceed from absentee landlords. But these annuitant landlords have servants in all the parts of their

zemindaries, and who would believe that ryots will buy and sell jotes without the knowledge of the myrmidons of the Zemindar? If, therefore, any such transactions take place without the Zemindar being able to take any legal steps for redress, he should hold his Amlah accountable for them, and not cry like a helpless baby.

(5). The fifth and last argument of the Zemindar, namely, that it is unjust and unreasonable to make a distinction between him and any other purchaser of an occupancy-holding seems to us to be a valid one. In our humble opinion if a Zemindar-purchaser must re-let the holding at the old rent, the money-lender or any other purchaser of it, should he choose to sub-let the land, must not be allowed to dictate his own terms. We shall dwell, at length, on this subject when we come to the question of sub-letting.

Before we close this part of the discussion, we shall consider the proposal of the Bengal Government to compel the zemindars "to let out *ryotti* land of which they may become possessed" by purchase, &c., and to provide "by way of penalty that if such land were not let to tenants under the Bill within a year from its coming into the zemindars' possession, any ryot should be authorised to demand that it be let to him." We regret we cannot support this recommendation of the Bengal Government. A Zemindar who buys the occupancy right of a ryot, buys it for some valuable consideration, and it would not, in our humble opinion, be reasonable and fair to compel him to re-let it until he pleases to do so. So long as a Zemindar keeps in his *khash* possessian, a ryotti land purchased by him, there should be nothing to compel him to part with it. But when the Zemindar re-lets the land to a ryot, it should come to that ryot with

all the incidents attached to *ryotti* lands—with occupancy rights. From this point of view, we consider that the proposal contained in section 56 to make the "ryot of land of which landlord has acquired occupancy right to be an occupancy ryot," is reasonable and proper.

In the opinion of His Honor the Lieutenant-Governor, section 56, as it has been drafted, is "too drastic. The occupancy right is the attribute of the settled ryot, and it should not in this case be made adherent to the soil. Neither is it really necessary for the purpose in hand that it should be so, for, if the *ryotti* land acquired by the Zemindar be let to a settled ryot of the village or estate, that ryot will hold it on an occupancy title at a fair rent. If it be not let to a settled ryot but to a non-occupancy ryot, but few years should elapse before an occupancy title will accrue to him, if he be well behaved and industrious." Now, as the Zemindar when re-letting the land will, as the Lieutenant-Governor has correctly imagined, "recoup himself for the expenditure incurred in the exercise of his right of pre-emption by imposing a fine upon the in-coming tenant," we do not see any reason why that tenant should not acquire for the "fine" paid by him the right of occupancy in the land re-let to him. By equalizing "the *maxima* rents demandable from occupancy and non-occupancy ryots," the Lieutenant-Governor believes, that the "zemindars can have no great motive in opposing the accrual of occupancy rights." But, as the Zemindar's power of ejecting a non-occupancy tenant is not proposed to be taken away, the mere "equalization of the *maxima* rents," will not, it seems to us, be a sufficient protection to the in-coming non-occupancy ryot. It will be for the interest of the Zemindar not to allow the right

of occupancy to accrue to such a ryot. By changing hands, or by threatening to do so, the Zemindar will always be able to realize a "fine," and that would work as a "most powerful incentive to defeat the growth of fixity of tenure." While, therefore, we agree with His Honor the Lieutenant-Governor, that there should be no difference in the rents of occupancy and non-occupancy ryots, we beg leave to respectfully differ from His Honor in thinking that this equalization of *maxima* rents will serve the object with which section 56 has been framed, and we would, therefore, make no alteration in it.

V.—SUB-LETTING BY OCCUPANCY RYOTS.

Section 50 (*e*) of the Bill provides that when a ryot has an occupancy-right in respect of any land, he may sub-let the land or any part thereof. This is not a *new* right that is proposed to be conferred on an occupancy-ryot. Section 6 of Act X. of 1859, which lays down the twelve years' rule for the accrual of occupancy-right, recognizes the right of a ryot, who has a right of occupancy, to *sublet* his land. And it has been, in several cases, ruled by the High Court, that a ryot does not incur a forfeiture of his occupancy-right by sub-letting (*vide* Dr. Field's *Digest*, p. 38). Section 50 (*e*) cannot, therefore, be called an innovation or be characterized as revolutionary. But let us see what the zemindars have to say about it. The twelfth ground of their petition to Parliament runs as follows:—

"XII. And this evil (the reduction of the actual cultivator to the miserable lot of a poor day-labourer) will be both multiplied and aggravated, as the Bill proposes

to encourage sub-letting. If there is any thing in the agricultural system of Bengal, which has tended to depress the condition of the actual cultivator of the soil, it is sub-infeudation. The actual agriculturist, who constitutes the lowest link of the chain, necessarily bears the whole burden, and the more the chain will be lengthened, the worse will be the fate of the actual cultivator of the soil. The new tenure-holders, who are created by the Bill will be small proprietors, and it may be easily imagined whether small proprietors, themselves not agriculturists, but absorbing agricultural profits, are more conducive to the welfare of the agricultural population than large proprietors. By and bye, as the capital of these small tenure-holders will increase, they will also become large proprietors. The result of the proposed Bill will, therefore, be the destruction of the present proprietors, who have either inherited or paid fair market value for their estates, the creation of a new class of small proprietors, who will, for the most part, acquire their rights without paying for them, and the impoverishment and degradation of the actual cultivators of the soil."

The following remarks appear under Section 50 (*e*) in the "Notes" :—

"Section 50 (*e*).—Both Sir Ashley Eden and the Secretary of State are strongly against the practice of sub-letting. The latter remarks.—'I entirely agree with you that sub-letting, where the custom has not become firmly established, should be discouraged,' and yet the Bill would give the right indiscriminately to all occupancy-holders. If it be the object of the legislature to foster a substantial class of cultivators who have a direct interest in the agriculture of the country, that object would be frustrated

by giving to all occupancy-ryots the right of sub-letting. There are, doubtless, occasions when sub-letting may become necessary, as, for instance, when the holder of the right is a woman, or a minor, or an invalid, and a provision for sub-letting in such cases would doubtless be reasonable, but the grant of the right to all occupancy-ryots, whether they have or have not the right by custom, would simply tend to create a class of middlemen who would enjoy all the rights and privileges taken away from the landholders, while the cultivators themselves would fare much worse than at present."

The arguments advanced in the above extracts resolve themselves into the following:—

(1) The proposal to confer on the occupancy-ryots generally the right to sub-let, whether they have or have not that right by custom, is an innovation.

(2) The result of the proposed measure will be the destruction of the present proprietors; the creation of a new class of small proprietors; and the impoverishment and degradation of the actual cultivators of the soil.

As regards the first of the above two contentions, we have already shown that under the law now in force, the occupancy ryot, everywhere, enjoys the right of sub-letting, irrespective of custom. The Bill, therefore, does not here propose to introduce any change over the existing state of things.

How far the result of sub-letting by occupancy ryots has hitherto been to foster a class of middlemen who enjoy all the rights and privileges of the landlord and bring on impoverishment and degradation to the actual cultivators of the soil, is a matter deserving of the most serious consideration. That it has occupied the most

anxious thoughts of His Excellency the Viceroy will appear from the following extract from his Despatch, No. 6, dated the 21st March 1882, to the Secretary of State for India :—

"93 So far we have considered the landlord's interest but the protection of the ryot is a matter of much greater difficulty. The money-lender by means of a mortgage might appropriate the whole profits of the holding; or, by foreclosure or purchase, he might become possessed of the occupancy right, making a sub-lease to a cultivator; or, the occupancy ryot of to-day, finding his interest profitable, might gradually disuse cultivation, sub-letting the land to an under-ryot at an exorbitant rent. In all these cases the actual cultivation of the soil would, unless provision be made to the contrary, tend to fall into the hands of a rack-rented peasantry, the fruit of whose labours might be reaped by speculators or absentees, or mere annuitants, idly consuming the agricultural yield in unproductive expenditure. A generation hence, it may be said, present circumstances will repeat themselves; the present settled ryots will have become, to all intents and purposes, tenure holders, or they will have parted with their rights in favor of non-agriculturists, and the Government will again be moved to interfere for the protection of new masses of peasant occupants against practical serfdom and oppression.

Transfer : its consequences to the ryot.

"94. We agree with the Lieutenant-Governor that any general prohibition, either of the mortgage or of the sub-lease of the holding, would be inoperative. We admit, therefore, that some of these consequences cannot be altogether prevented; but we desire to

Reservation of power to correct such consequences if injurious.

minimise their range and effect. They may be brought about in two different ways; that is, either through the direct transfer of the old holding by sale or mortgage to a non-agriculturist, or, the holding being retained by the original settled ryot or his representative, by the conversion of cultivators and peasants into petty landlords living on their rents. The first process has produced, in many parts of the country, evils against which we would take all possible precaution. That in course of time the second process will be in operation is, we think, no conclusive objection to the principle of the Bill. The probability assumes the passage of the present generation of ryots through a period of prosperity; and the assurance of a position of comfort, if not of industry, to their successors in interest. The Famine Commission, in advocating the extension of occupancy-rights, contemplates the eventual transfer of such rights to the actual cultivator, if the original holder becomes divorced from the soil; and considers that the Rent Courts could decide whether an occupancy-tenant had ceased to be an habitual cultivator. Whether rights are re-adjusted by the Courts under a special law or by express legislative provision, the principle is the same; and we would merely say now, that nothing at present proposed to be enacted will deprive the legislature of its power of interposition to prevent the growth of a pauperised cottier class, if, in future, there is any serious sign of this danger. We would, however, do our best to retard any such development. Should it occur, the terms of section 8 of Regulation I of 1793, already cited, are amply wide enough to support the most effective intervention. Our authority to protect, not only dependent talukdars and ryots, but *all other cultivators of the soil*, is unimpeachable; and we would unmistakably assert

that such authority is not exhausted on the present occasion, and that the Government reserves its liberty to repeat, at any future date, measures of protection similar to those which are now proposed" (Correspondence between the Government of India and the Secretary of State regarding the proposed amendment of the Rent Law, p. 36.)

The difficulties of the present position are stated in the following extracts from the Report of the Rent Law Commission, and the opinions of Messrs. Dampier, Mackenzie, Reynolds, and Finucane, and the Minute of Sir Richard Temple, dated the 26th April 1876.

THE RENT LAW COMMISSION :—"We have seriously considered whether the acquisition of a right of occupancy should not be limited, in all cases, to the actual cultivator of the soil. Having examined the subject in all its bearings, we have come to the conclusion that such a rule, if laid down, would exercise a disturbing influence, the immediate benefit to be derived from which appears doubtful to some of us, and the ultimate consequences of which none of us can pretend to forecast with any reasonable certainty." (Report of the Rent Law Commission, Vol. I., p. 15.)

The Hon'ble Mr. H. L. Dampier :—"11. Then, as to whether the right of the occupancy ryot to sub-let shall in any way be restricted. After considering all that has been urged in the present discussions and much more, I have arrived at the conclusion that, as things now are, any attempt to restrict this right, either by absolutely prohibiting it, or by putting any restriction on the rent for which the occupancy ryot may sub-let, will be futile. If a ryot wishes to sub-

let and can get a profit of 100 per cent. on the rent which he has to pay, the existence of law against his so doing will lead only to evasive arrangements between the ryot and his sub-lessee, the *korfa*. Any provisions to the effect that such rent cannot be recovered by legal process will be met by such devices as payment of the rent beforehand, or by an increase of the *korfa's* rent to cover the risk of loss and other incidents of illegality.

"12. (1) Nor do I feel by any means certain that, under the present circumstances of the country, we should be justified in putting a stop to the system of sub-letting to *korfa* ryots, even if we could do so effectually. It is very well to say that the *korfas* will be the impoverished cottiers of the future. That, of course, will be an undesirable result. We had much rather see them thriving artizans, hopeful emigrants, or even well-fed and well-clothed labourers.

"(2) But are these alternatives really before them?

"Can we point to the industries which are open to them as artizans?

"Are we sanguine enough to believe that they will (as a class) emigrate rather than starve in their villages?

"Or, do we really think that as things stand in this country, they will be better off as hired labourers than as 'korfa cottiers'?

"(3) For myself I should reply in the negative to each of these questions. How, then, should we, under existing circumstances, benefit this class by excluding them from korfa cottierism? We have nothing to offer them instead of emigration, and that they will not accept. It may be said 'if they will not accept it, they must take the consequences of their own obstinacy.' This I am not prepared to say.

"(4) Very probably, if we could effectually put a stop to the practice of sub-letting to *korfas*, we might thereby bring about the desirable end of diminishing the pressure of population on the soil, but I fear that the object would be gained in a much more immediate and summary manner than by a gradual decrease in the number of births." (Report of the Rent Law Commission, Vol. II. p. 472)

Mr. A. Mackenzie:—"The great difficulty which I feel in connection with this question, of sub-letting by ryots, is the fact that all over the country such sub-letting is practised, and has always been practised, and that it is clearly recognized by the existing law. We have before us no *tabula rasa* either in the country or in the statute-book, and I cannot myself understand how those members of the Commission, who at the outset objected to correct even the demonstrable errors of Act X, on the ground that, right or wrong, it was now law, can calmly propose to revolutionize the whole agricultural society of Bengal, by sweeping away a provision of Act X which *does recognize an existing fact.*

"I do not for a moment imagine that the suggestion now provisionally adopted by the Commission is free from all objection. The whole question is involved in extreme difficulty, and any attempt at its solution must be put forward with diffidence by any person who has really tried to realize those difficulties. My present position may be explained thus:—

"I am desirous of doing all I can for the actual cultivator. I would do all I can to prevent rack-renting of every sort. I think it very undesirable, that a ryot should by sub-letting to rack-rented korfa ryots, convert

himself into a mere middleman. But as a matter of fact, I find that men recognized as ryots, entered as such on the *jummabundis* of the zemindars and subordinate talookdars, do sub-let in this way, and I do not believe that any Legistature can by a stroke of the pen change the whole face of the country. If we are to endeavour to get rid of sub-infeudation of this objectionable sort, we shall only succeed by accepting patent facts, shaping our proposals so as to fit into these, and giving by law an impulse and a *tendency* in the direction which we wish to see things take. We may do what we fairly can to *discourage* this sub-letting; we cannot ignore it or change its character all at once." —(Report of the Rent Law Commission, Vol. II., p. 234).

The Hon'ble Mr. H. J. Reynolds:—"On the difficult question of sub-letting, I can only say that, after the best consideration I have been able to give to the subject, I am compelled to come to the conclusion arrived at by Mr. Dampier (*see* page 493 of the Report) that any attempt to restrict sub-letting will be futile. I think it equally useless to prohibit sub-letting, or to limit the rent at which the ryot may sub-let. There are some things which legislation is powerless to effect: and it is idle to pass a law which is certain to be either broken or evaded. There also appears to me to be much force in what Mr. Dampier goes on to say regarding the policy of the prohibition. We cannot stamp out this class of men, and what have we better to offer them than this position of sub-lessees?

"It may possibly be open to doubt whether there is any serious evil which requires to be met. At all events, we have the positive testimony of Mr. Taylor, that in Khoor-

dah, where unrestricted sub-letting has been permitted, it has not had the effect of diminishing the average size of holdings, the process of amalgamation having gone on *pari pasu* with that of sub-division. In my own experience, the only instance which has come to my notice in which sub-letting has pauperized a large class of the tenantry, has been in the Chanchal Estate in Maldah."—(Bengal Government Report, Vol. I., p. 276).

Mr. Finucane :—"A third difficulty which would arise in framing tables of rates, is a technical one. The Tenancy Bill (section 62) empowers the Local Government to prepare tables of rates fairly and equitably payable by *occupancy* ryots only. Under section 4 (*see* Illustration) an under-tenant or korfa can acquire an occupancy-right if such be the local custom. There can be no manner of doubt, that under the local custom as recognized in Jessore, korfa ryots or sub-tenants are supposed to have occupancy-rights. There are, therefore, two occupancy-rights in the same land, and there would, accordingly, be two tables of rates required for it—one, the table of rates payable by the korfa occupancy-ryot; the other, the table of rates payable by the occupancy ryot whose sub-tenant the koorfa ryot is. I do not see that this need lead to any great difficulty; but I think it well to draw attention to the point, so that it may be determined to which of these two classes of occupancy-ryots, the limitation of the maximum rent to 20 per cent. of the value of the gross produce is to apply. Is the rent of the korfa occupancy-ryot, who actually cultivates the land, to be limited to 20 per cent., or is it the rent of the occupancy-ryot who pays direct to the Zemindar which is to be so limited?

"I need hardly say that I am not questioning

the propriety of allowing koorfa ryots to acquire occupancy-rights under local custom. On the contrary, considering that korfa ryots are already in Jessore a more numerous class than the ryots who pay direct to the Zemindar, it seems to me doubtful whether the time has not already come in this district, which the Hon'ble Mr. Ilbert speaks of as remote, namely, when the great bulk of the actual cultivators would be under-ryots with but little protection from the law. Coming from Behar where under-ryots or koorfadars are few, and are understood to have no rights of occupancy, I was surprised to find how numerous and important this class is in Jessore, and how strong among them is the feeling that they have just the same rights of occupaney as the ryots under whom they hold,"—(Selections from the Records of the Board of Revenue, L. P., p. 121)

In another part of Mr. Finucane's Report, noticed above, we find:—

"The rates paid by these koorfadars have been unaltered for generations. The jotedars say, when their jumma was enhanced, they did not themselves enhance their sub-tenants' jummas. They say they dare not do so. These koorfadars are all of them the jotedars' old sub-ryots whose jummas cannot be enhanced. The koorfadars sell their jotes, and are in every respect treated as occupancy ryots. These jotedars say the pergunnah rate for dhan land is Re. 1-5-3, yet they realize less from their tenants, because, they say, they cannot induce them to pay at the pergunnah rates. There is no dispute between jotedars and koorfadars. These jotedars say, every man who pays rent direct to the malik is a jotedar."—(Selections from the Board's Records, p. 129.)

The following remarks on the above, appear in the Board's letter to Government, dated the 22nd June 1883 :—

"14. Mr. Finucane's report brings out one more point of the first importance. A, being formally recognized as the 'statutory occupancy ryot', entitled to hold at the rate which is fair and equitable for ryots of his class, what protection is to be given by law to *his* sub-tenant or koorfa ryot. In Jessore, which is typical of other districts, the position of the koorfa ryot is as well defined and secured by custom as that of the ryots from whom he holds. This is recognized by the superior or statutory ryot; but in the eastern districts the position taken by the haoladars and tenants of that class is, that it is of the essence of the customary rights and status of the haoladar, that those who pay rent to him shall not be protected against him as to the amount of rent; that, in fact, while the haoladar is liable to pay a customary rent only as limited by law, his arrangements with his tenant shall be unrestricted, except by competition, and this whatever the size of the haola.

"15 In one of the settlements the position taken up by the haoladars may be said to have been :—

'We will accept any reasonable enhancement of rent you choose to impose on ourselves, provided you do not in any way recognize our korphas in the settlement proceedings, and that you do not profess to fix our rents by a percentage deduction from the rents which we receive; but if you attempt to do this, however liberal the deduction you may make as our percentage of profits, we will resist the settlement by civil suits and every means in our power.'

"The question assumed so much importance (even as threatening the peace of the Backergunge district), while Sir Richard Temple was Lieutenant-Governor, that it was

laid before him for consideration. His Honor directed that the claims of the haoladars should be recognized. Copy of his Honor's minute, dated 26th April 1876, is annexed for reference.

"16. These questions must be faced in the Tenancy Bill, and it seems that the legal recognition and protection of korpha ryot, below the protected statutory ryot, which would merely stereotype the existing custom of districts of the Jessore type, will amount to the introduction of a new principle in the eastern districts, followed by the consequences which Sir Richard Temple thought it expedient to avoid.

"17. As the result of all that has passed during the last three or four years, the conviction has forced itself on Mr. Dampier that, however low may be the grade of tenancy to which the boon of legal protection against enhancement of rents may be granted, the tenants of that grade will gradually, as prices rise and competition for land increases, raise themselves out of the position of actual cultivators, having a direct interest in the out-turn of the harvest, to the more coveted position of landlords living on the margin between the competitive rents which they receive and legally protected rents which they have to pay. As this comes about in each district, to quote Mr. Ilbert's words, the state of things will again be reached, 'when the great bulk of the actual cultivators would be under-ryots with but little protection from the law,' and would remain so until another revision of the law regulating rents be undertaken, so as to extend its scope to the altered circumstances which will then be found to exist. The natural effect of competition and self-interest are forces which will militate irresistibly against any provision of the law, which shall attempt sub-

stantially, and for all time, to protect the actual cultivator of the soil in his arrangements as to rent with his landlord."—(Selections from the Board's Records, pp. 334 to 336.)

"*Minute by the Lieutenant-Governor of Bengal, dated 26th April* 1876:—

"On Haola-Tenures (Waste Land Reclamation) in the Backergunge District.

"A question has been submitted by the Board of Revenue regarding 'haola' tenures in the deltaic district of Backergunge. A haola tenure means the grant by the landlord of a certain limited area of waste land to a small agricultural capitalist, called the 'Haoladar' in order that he may reclaim it: he settles down some cultivators on the land, advances them some little money wherewith to erect homesteads, buys ploughs and cattle and gives them seed for sowing the food crops, and the like, he collects rents from them year by year and pays some quit-rent to the landlord. The rents realizable by the haoladar from the cultivator follow the conditions of all other rents. The quit-rent payable by him to the landlord is generally variable, and may be enhanced according to circumstances. The permanency, however, of his tenure as haoladar, and his position as middleman between the landlord and the cultivator, is, as I understand, not open to question. So long as he pays the quit-rent to the landlord, he may keep his tenure, and make his own arrangements with the cultivators.

"2. Such is the general case with the haola-tenures in private estates permanently settled.

"3. But there are many estates, some belonging to Government and others to private persons, in which the dues receivable by Government are temporarily settled for terms of twenty and thirty years from time to time.

Some of these have been leased to farmers. A new settlement is now being made of the Government revenue, and the settlement officers are at the same time fixing the rents payable by the cultivators. In most of these estates there are haola-tenures, and, as a new settlement is being made, a question has arisen as to whether the settlement officer has a right to determine the rents receivable by the haoladars from the cultivators, as well as the quit-rent payable by the haoladars. The haoladars who constitute an important class, while admitting the right of the settlement officer to revise the haola quit-rent, yet strongly object to the rents of the cultivators being fixed by the settlement officer, alleging that this matter should be left to be arranged between the haoladars and the cultivators. On the other hand it is urged, that these cultivators are entitled to have their rents fixed by settlement, as all other cultivators.

"4. After considering all that is submitted by the Board of Revenue, I think that, wherever a real haola-tenure has arisen, the right of the haoladar to settle the rents with his cultivators, without interference from the settlement officer, must be allowed. This right arises from the nature of the case and the custom of the country. If this were not allowed, I should apprehend, after consulting the Collector, that some trouble might arise in the district."—(Selections from the Board's Records, pp. 336 & 337).

In the face of the above facts, people who talk lightly of doing away with sub-letting do not seem to have realized the gravity of the situation. Mr. Finucane has said that in Behar "under-ryots or koorfadars are few," and this is also the opinion of Mr. Reynolds, as will appear from the following :—

"It does not seem necessary here to enter upon the question of sub-letting. That question does not present any special difficulties in Behar; on the contrary, the problem in that province is a much easier one than in Bengal. Sub-letting takes place where the *status* of the ryot is secure, and where the rental forms only a small proportion of the gross produce; but in Behar these conditions are comparatively rare."—(Bengal Government Report, vol. I., p. 272.)

But, though sub-letting is rare in Behar, it is common in Bengal, and very common in districts like Jessore and Backergunge where there has been much waste-land to reclaim. The framers of the Bill have, in Section 4 (Illustration), referred to by Mr. Finucane, provided for the protection of the under-ryots *in cases where, by custom they have occupancy rights,* as will appear from the following:—

"The custom that an under-ryot should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by the provisions of this Act. That custom, accordingly, wherever it exists, will not be affected by this Act."

But it seems to us that the above reservation in favour of under-ryots is rather narrow and incomplete. In the first place, it will extend to only those places where the custom, conferring on the under-ryot a right of occupancy, is an established one; secondly, the respective rights, in such cases of the occupancy-ryot and *his* under-ryot have been left undefined in the Bill. The difficulties surrounding the question have, in fact, been left untouched by the framers of the Bill. The zemindars and their advocates

have, it seems to us, condemned sub-letting without studying the subject in all its bearings, and *without taking cognizance of the fact that sub-letting by occupancy royts is recognized under the existing law.* It will *not,* under the existing state of things, *be advisable to repeal the present law,* and take away from the occupancy-ryot the right of sub-letting, but what the Legislature should do is, (1) to discourge sub-letting, as much as possible, and (2) to prevent Mahajans or money-lenders, purchasing occupancy-rights, from turning into middlemen with ryots under them possessing no rights whatever. The proposal under this head, contained in the following extract from the Bengal Government letter, already referred to, meets, in our opinion, not badly the second of the above mentioned two objects.

Sub-letting by occupancy ryots.

"15. Having thus expressed his opinion in favour of the unrestricted freedom of sale of occupancy-rights in Bengal and Behar, the Lieutenant-Governor proceeds to consider the question of sub-letting, and in regard to it he at once admits that sub-letting by occupancy ryots is calculated to cause difficulty and inconvenience. Mr. Rivers Thompson has, however, sought in vain through these papers for any criticisms on this question which are not merely destructive, or for any practical suggestions by which sub-letting may be prevented, or the difficulties which it occasions obviated. From the discussions which have passed, however, one fact, which is, besides, in accordance with the Lieutenant-Governor's previous ideas, comes out in strong relief, namely, that sub-letting cannot be prevented either in Bengal or in Behar. We may declare it illegal and refuse its recognition in our courts, but we only thereby increase the evils of a system which

if it did not subserve some useful purpose, would not possess the vitality which it exhibits.

"Sub-letting by occupancy ryots is undoubtedly an established custom, which has its uses, and which cannot be stopped. The question then arises,—What are its abuses, and how can they be removed? The abuses of the system are summed up in paragraph 41 of the Statement of Objects and Reasons. 'The power of transferring and sub-letting which the Bill recognizes may, in course of time, lead to a state of things in which the great bulk of the actual cultivators would be, not occupancy ryots, but under-ryots with but little protection from the law.' If these fears are ever to be realized, it will not, in the Lieutenant-Governor's opinion, be from the recognition of the custom of sub-letting, which is nothing new, but from the accumulation of occupancy-rights in the hands of rack-renting non-agriculturists through the operation of free sale. The prevention of evils from sub-letting, therefore, depends on the probability that Mahajans and non-agriculturists will not invest their money in buying occupancy-rights, or, if they do, on our success in limiting their power of rack-renting under-tenants.

Prevention of rack-renting by Mahajans who purchase occupancy-rights.

"Now from the statistics exhibited in paragraph 14 above, there is reason to anticipate that Mahajans will invest their money in the purchase of occupancy-rights; and the question how to prevent the evils contemplated as possible under such circumstances in the Statement of Objects and Reasons, demands consideration. In the Lieutenant-Governor's opinion an effective way to prevent these evils is by converting all purchasers of occupancy rights, who are not *bonâ fide*

cultivators, into tenure-holders, under whom the actual cultivator will have the protection afforded by the *status* of a ryot; and this was one of the reasons which induced Mr. Rivers Thompson to propose the definitions of 'tenure and ryot' given in paragraph 6 above. The other check upon the purchase of occupancy-rights by Mahajans follows from the proposals which I am to submit under the next chapter, regarding the rack-rent limits to be imposed on ryots' rents, and the checks on exorbitant enhancements." Further on we find: "As at present advised, Mr. Rivers Thompson thinks that this (the tendency towards an equalization of rates at the higher level) is a danger which we should not run the risk of incurring, and that if a rack-rent limit is to be preserved in the Bill at all, it should be the same for both occupancy and non-occupancy ryots. He has no objection to five-sixteenths of the produce in the case of under-tenants (korfas) who can never acquire occupancy-rights; but he thinks that there is great danger to the cultivating classes in the provision of a separate limit for occupancy and non-occupancy ryots. Separate limits are tantamount to a premium on the discouragement of fixity of tenure."

Now, we have already stated that the proposal of the Bengal Government "to convert all purchasers of occupancy-rights, who are not *bonâ fide* cultivators into tenure-holders, under whom the actual cultivator will have the protection afforded by the *status* of a ryot" is an improvement over the Bill as it was originally drafted. It is in accordance with the recommendation of the Famine Commission who observed:—"The occupancy-right can only be beneficial to the community when enjoyed by *bonâ fide* cultivators, and the object of the law should be to prevent any one who is not a *bonâ fide* cultivator from acquiring

or retaining such rights." But it seems to us, that as even under the proposed amendment there will remain ample room for sub-letting, some provisions should be made for protecting such sub-ryots, who will be the actual cultivators of the soil, from being rack-rented by the occupancy-ryots above them. The Lieutenant-Governor's proposal to limit their rents to five-sixteenths of the produce seems to us to be objectionable. *Ryots of the cultivating class*, who sub-let their lands, do so, generally, for a time, through illness or some other cause preventing them from cultivating themselves, and such sub-letting is generally done "on the terms of a division of produce between the occupancy holderand the actual cultivator." As under section 81 (1) (*a*) of the Bill, rent payable in kind may amount to half the gross produce or its value, the case of such actual cultivators sub-letting their land will not be affected if the *maximum limit of the money rents* payable by under-ryots (korfadars) is reduced. In order, therefore, to discourage purchases of occupancy-rights by Mahajans, we would make very little distinction between the rents payable by an under-ryot (korfadar), and a ryot—occupancy or non-occupancy. According to His Honor the Lieutenant-Governor there should be no distinction between the rent-payable by an occupancy ryot and an ordinary or non-occupancy ryot. And, in our humble opinion, there should be very little difference between the rents payable by an occupancy ryot and *his* under-ryot. But the proposal to make five-sixteenths of the gross produce the maximum for the under-ryot, will have the effect of creating a very great difference between the rents of the occupancy ryot and *his* under ryot. We shall try to illustrate this by an example.

Suppose the rents of A, the superior ryot, for *the land held* by *his* under-ryot, B., is raised to Rs. 16 under the

one-fifth rule, then the rents of the under-ryot will be liable to be raised to Rs. 25 under the five-sixteenths rule, though his present rents may not amount to even half of it.

Now, we can never support rack-renting of the *actual cultivator of the soil*, by any body, not even by the occupancy ryot. An occupancy ryot sub-letting his land *should not look for more profit than an anna or two in the rupee over and above the amount paid by him.* And we would, accordingly, regulate the rent of the under-ryot (korfa) *not according to the proportion of the gross* produce but according to the money-rent actually paid by his superior ryot.

VI.—RENTS PAYABLE BY OCCUPANCY RYOTS.

The Bill proposes in Chapter VI, that the money-rent payable by an occupancy ryot shall not exceed one-fifth of the estimated average annual value of the gross produce in staple crops, and that the rent paid in kind shall not exceed one-half of the gross produce. Any contract whereby a ryot agrees to pay more than one-fifth of the value of the gross produce, or whereby he agrees to pay more than one-half of the gross produce, when rent is payable in kind, is declared illegal.

The zemindars' objections to the above proposals are stated in the fifth and sixth grounds of their petition quoted below :—

"V. The determination of rent in Bengal has been generally discretionary. It is true that there was at one time a customary rate in many parts of the country, but the custom was varied so much as by personal, local, and other considerations, that the rate was practically left to the discretion and mutual understanding of the landlord

and tenant. This fact has been brought to prominence by the recent enquiries made by Government as to tables of rates prevalent in different districts. When the Permanent Settlement was made in 1793, the rate of rent, it is on record, varied from three-fourths to one-half the value of the gross produce of the land. Until a few years of the enactment of Act X. of 1859, there was not much dispute between landlord and tenant about the rate of rent; the rise in the value of agricultural produce led to a demand for increased rent, and in order to bring the question of rent to a satisfactory judicial test, that Act declared that the rent shall be reasonable, fair, and equitable, and provided certain rules for the guidance of the courts. These rules, however, have proved so unworkable, that the enhancement of rent through the judicial machinery has practically come to a dead-lock. The gravity of the situation was represented by the landlords to Government, and the Government promised to redress their grievance. That promise is now about to be redeemed by the retrograde step indicated in this Bill. Under this Bill the rent of an occupancy tenant shall not exceed 20 per cent. of the gross value of staple products of the land. In other words, the landlord is practically reduced to one-fifth partner of his own property with his tenant. The rent due to him represents the shares of the Government and of himself, but this arbitrary limit will necessarily deprive him of all participation in the advantages which the progress of the country will confer upon all other classes of the community, but will always be subject to losses consequent on decadence and reverses. As regards the tenant-at-will, called in the Bill 'ordinary ryot,' the restrictions are so fenced round, that practically there will be no enhancement of rent. In Behar, there

are certain tenures called *Bhaoli* tenures, analogous to *Metayer* tenures, and with regard to these the Bill actually sanctions reduction of the present rents. Thus the landlord will be practically deprived of the legitimate fruits of his capital, prudence, and good management, the enjoyment of which had been guaranteed to him by the Permanent Settlement.

"VI. Contract is the basis of transactions in civilised life, the first step in advance over patriarchal habits, and essential to the success of social and moral progress. The tenant, as an agriculturist, or as a member of society, is allowed perfect freedom of contract in all matters affecting him, whatever the difference in the status, intelligence, and influence of the contracting parties, but this Bill declares that he shall not be competent to enter into a contract respecting his tenant-right or the rent payable by him, unless his contract for the latter is approved by a revenue officer to be appointed by Government. This denial of the ordinary rights of citizen to the tenant was never before known in this country. On the contrary, the Legislature had repeatedly encouraged the interchange of leases between landlord and tenant. The disability imposed upon the landlord for the sake of the fancied security of the tenant is still more arbitary, unjust and unjustifiable."

The following remarks under this head appear in the "Notes":—

"Section 59. The objections to the restrictions to freedom of contract apply with double force to contracts relating to rent, which the contracting parties, with an eye to their own interests, will enter into. Whenever a ryot agrees to pay a certain amount of rent for a plot or plots of land, he does so after taking into consideration

the situation and capabilities of the land, and the profits it or they will fetch him. He is the best judge of his own interests in the matter; he has his remedy in all cases in which the least coercion has been used, and yet this section restricts his rights as a free agent, and makes a revenue officer the guardian of his interests. But will any amount of legislative precaution prevent the parties from entering into any contract for rent they might agree upon? The futility of such attempts was made abundantly clear by the experience of the usury laws. The result of such a law would be that honest zemindars would suffer, while those whose exorbitant demands for rent it is intended to limit, would be able to carry every thing in their own way.

"The arbitrary limit imposed by this section to rent with reference to the value of produce of the land, is any thing but just and reasonable. Leaving aside the question of lands which were waste at the time of the Permanent Settlement, and which the landholders have a right to let to their best advantage, it cannot but be conceded that they are entitled to get the State share of the produce of the soil which was made over to them for an annual money value or revenue fixed in perpetuity. Any measure which would reduce that share cannot but be an act of spoliation, specially if it originates with that one of the contracting parties which received at least an adequate consideration for the bargain. It is well known that for the purposes of the Permanent Settlement the rent was assessed at from half to three-fifths of the value of produce. Whether the Government of 1793 was right or wrong in assessing the rent at such a ratio is a question with which neither the present Government nor the zemindars have any thing to do.

The British nation as a master of the soil took upon themselves the power of making what settlement of land revenue they thought proper, on the assumption that they had got the land free of all previously existing rights and engagements (Section 30, Regulation II, of 1822). The rule in question is, therefore, a direct breach of the compact of 1793. If the Government wish to keep faith with the landholders, and to deal justly by them and their ryots, let the ratio of produce which formed the basis of settlement in 1793 in each district be enquired into and determined for the purpose of fixing a limit to the Zemindar's claim for rent. One-half the value of the produce is not so high a ratio as it is supposed to be by some. Only last year the Bombay High Court decreed a claim for enhanced rent on the basis of half the value of the gross produce of the land—(3, I. L. R., p. 348.)

"The question of maximum limit to rent on the basis of a share of the produce presents another aspect. The ratio which rent bears to the value of produce varies in different districts from less than one-twentieth to more than one-half. Of what practical value is a maximum limit under such circumstances? In districts like Dacca and Chittagong, where the ratio is low, the landholders would be entitled to double their rents after every ten years, while the Hooghly, Burdwan, and such other districts where the ratio is high, the rule will stop enhancement altogether, although as a matter of legal right and justice, they are entitled to get as rent a sum which represents their origual share of the produce. It is difficult to say how this variation in the ratio of produce in different districts took place; but if it be assumed that the ratio which formed the basis of the Permanent Settlement

was pretty nearly uniform in these provinces, the present difference must have arisen by a rapid rise in the value of produce in districts like Dacca and Chittagong. Be the cause, however, whatever it may, it is undoubted that it has resulted in making estates and tenures in those districts much more profitable than those in Hooghly and Burdwan. The road-cess statements show that, whereas in Hooghly the ratio of revenue to the total rent-roll of the district is 48·4 and in Burdwan 40·8, it is only 21·9 in Dacca, 24·7 in Chittagong, 16·1 in Mymensingh, 8·6 in Durbhanga, and 6·7 in Lohardugga. The effect of the rule would therefore be that, while it would press hard on the landholders whose profits are small, it would give those whose profits are large an unlimited latitude for enhancement of rent."

The following are Mr. Bell's arguments on this point in support of the zemindars :—

"There is another provision of the Bill upon which I must say a few words. It is a striking illustration of the way in which the Bill restores the ancient land-law of the country. Before the Permanent Settlement, Mr. Shore tells us that the ryots' rent varied from half to two-thirds of the gross produce. The usual rate—and the present rate, where rents are paid in kind as in Behar,—was half or nine-sixteenths—Mr. Ilbert's Bill fixes a maximum rate of one-fifth. In other words, the common rate at the time of the Permanent Settlement was five-tenths; the Bill reduces it to two-tenths. This reduction has been made without the slightest inquiry. It was originally, Mr. Ilbert said, intended to fix the maximum rate at one-fourth, but at the last moment the Lieutenant-Governor suggested it should be one-fifth, and so one-fifth it is. This is certainly restoring the ancient land law with a vengeance.

It is proposed to do what Mr. Shore said could not possibly be done—fix a general rate for the whole of Bengal and Behar. The proposal is worthy of a madman. It is impossible to conceive that it could have emanated from any other brain."

The contentions of the zemindars and their advocate amount to these :—

1. The determinatlon of rent in Bengal has been generally discretionary.

2. When the Permanent Settlement was made in 1793 the rate of rent varied from three-fourths to one-half.

3. The present enhancement rules are unworkable.

4. The proposed limit will deprive many landlords of the advantages now enjoyed by them.

5. The Bill actually reduces rents of Bhaoli tenures.

6. One maximum limit has been laid down for all the districts of Bengal and Behar. This will work unequally.

7. There should be no restriction to freedom of contract by ryots.

The first of the above contentions is self-condemnatory. If the determination of rent in Bengal has been generally discretionary, what was the object of all the Regulations passed from 1794 to 1859 for the determination of rent through the Civil or the Revenue Court? The zemindars have referred to the results of the recent inquiries held by Government as to tables of rates prevalent in different districts to prove that rates were practically left to discretion and mutual understanding of landlord and tenant. But they have ignored the fact that in Jessore Mr. Finucane found that such tables existed, and that we ourselves also found that there existed Kanoongoe rate-papers in the Moorshedabad Collectorate. As regards the other inquiries the one by Mr. Carstairs in Hooghly has been pronounced

by the Board of Revenue to have been of a desultory nature. Mr. Macpherson's inquiry in Bogra was confined to a tract of country that was once waste, and Mr. Tobin's deputation to Shahabad and Mr. Finucane's deputation to Durbhanga were ill-advised, as *no money-rents* prevailed in Behar in former times, and the conversion of the *bhaoli* into *nakdi* has had the effect of creating a difference in the rents paid by different ryots.

As regards the other contentions, we shall, in the first place, quote the views of the Bengal Government on the subject:—

"In the first place, then, it must be said, or rather repeated, that the idea of regulating rents by a fixed proportion of the produce is not of recent growth in this country. It is of immemorial antiquity. Much obscurity exists as to what the State share of the produce was, but it seems sufficiently probable that the share, or rather its money commutation *(rebba)*, taken by the Mogul Government was one-fourth, and this fourth share is pointed to as the prototype of the existing proposals on the subject. In the earlier stages of this discussion, the zemindars of East Bengal, despairing of obtaining enhancements under the law, proposed that one-fifth of the produce should be allowed as rent; and the British Indian Association, improving on this proposal, suggested one-fourth. But that one-fourth was a high proportion even in the opinion of that Association, is manifest from the *quasi* official admission made by their representative organ, that if a higher rate or share (than one-fourth) be fixed for the landlord, it will trench on the very means of subsistence of the ryot? And again, one-fourth would be too high for many parts of the eastern districts. It is beyond question, however, that the circumstances of districts in different parts of the province admit of considerable variation in this particular.

"From the preceding it will be apparent that the idea of regulating the rack-rent at the present time by assigning a *maximum* portion of the produce to the landlord has been approved by the zemindars; but Mr. Rivers Thompson is free to confess that he does not look on the proposals, hedged round even as they are in the Bill, with unmixed satisfaction. As one officer puts it, 'no rational rent scheme can be based on a fractional share of the gross produce'; and even if the *net* produce were taken instead of the gross, it would still be very difficult to hit on a maximum limit which would not be unequal in its incidence over a province so diversified as Bengal. Another source of disquiet on this subject is the fear that the existence in the Bill of *maximum* limits may unduly stimulate that tendency to a rise in rents, which exists in every progressive community, and that effort will be made by landlords to convert the *maximum* limit of the Bill into the ordinary measure of rents in practice. 'Once,' says the Behar Landholders' Association, 'let Government fix a maximum rate, and no zemindar will rest until he has run up his rents to the prescribed limit.'

"All this said, however, it must be admitted that there are large portions of these provinces in which a maximum limit on rent cannot fail to be of advantage. Those portions are so heavily rented, that it would be a source of peace and contentment to the cultivators, if they had some idea of the limit beyond which their landlords' demands cannot pass. The Bill gives to the landlords an effective procedure for enhancement; if it also gives the ryot some assurance of the ultimate limit beyond which, under that procedure, enhancement may not pass, it will probably do good. As Sir Richard Temple said, 'the liability to uncertain demands must harass the ryot, must damp his zeal for improving his land, and must make him

chary of laying out capital upon it.' While thus giving his adhesion to the principle of a maximum limit, Mr. Rivers Thompson, however, desires very emphatically to say that if he believed the safeguards in the Bill were insufficient to keep the provision what it is intended to be—a maximum never to be passed, and but very rarely to be reached—he would prefer to abandon the provision in the Bill.

"As regards the propriety of the exact limit of one-fifth, Mr. Rivers Thompson admits that the question is one on which actual precision of knowledge or judgment is not possible. I am, however, to say that, after carefully considering all the information of a general and special character which has been accumulated on the point, the Lieutenant-Governor's opinion is that, for the Province as a whole, one-fifth of the gross produce allows a margin for future enhancements; while it represents as much of the crop as the ryot can part with and thrive. References to the share of the produce to which in former times the State might in theory be entitled to take as an extreme measure from the cultivators are very greatly out of place in dealing with existing facts. When population was scanty, the area of culturable land practically unlimited, and the produce large from a soil not overworked, a village or estate could well afford to give to the rent-receiver a large share of that produce. But where there is no margin of culturable land at all, and where population presses so densely on the soil, that it is a marvel how life can be supported, and where agriculture has, in this struggle for existence, degenerated into a mere 'spoliation of the soil,' the aspect of the case is entirely changed, and refereuces to theoretical rules of crop distribution at some early period of time, become unmeaning. This is the case throughout large portions of Bengal and

nearly all Behar at the present day, and if one-third was a rack-rent one hundred years ago in those localities, then one-fifth is a rack-rent there to-day. And to this conclusion, Mr. Rivers Thompson has been led, not merely by such considerations as those now adverted to, supported as they are by statistical information as to the growth of population which cannot be questioned, but also by the general opinion of competent authorities that, the costs of cultivation have largely increased; that owing to the absence of all improvements in the system of agriculture, the average harvest yield is stationary where it is not growing less; and that the struggle for life among the agricultural community is,—the deceptive influences of a few years of unusually good harvest notwithstanding—daily becoming more severe. It may be added in this connection that Mr. Rivers Thompson has given a practical proof of his conviction upon this point in his recent orders reducing the rental which had been assessed on the Khoordah estate."

We regret that His Honor the Lieutenant-Governor should have accepted it as sufficiently probable, that the share taken by the Mogul Government was one-fourth. It is true that Mr. Elphinstone in his History of India says that, at the settlement of Todar Mull, one-third of the average produce formed the Government demand This statement has been accepted as correct by Dr. Field, who, though not unfriendly to the ryot, is disposed to always take a decidedly gloomy view of his ancient rights. But we would invite the reader's attention to the following extract from the judgment of Mr. Justice Trevor, in Thakooranee Dassee's case :—

"It (the Settlement of Todar Mull) was made about 1582, and remained essentially in force for very many years. Under it, in accordance with the principle of

Mogul finance, the gross produce of land was divided in certain proportions between the sovereign and the husbandmen; the share of the former being *from one-half to one-eighth* of the gross produce, according to circumstances, and the zemindars, with whom the settlement generally was made, receiving in Bengal a portion of the land or its produce for their use and subsistence under the name of *nunkar*, which did not in the aggregate exceed one per cent. of the revenues collected by them."—(Bengal Law Reports. Full Bench Rulings. Part I., p. 210.)

Mr. Justice Trevor came to the conclusion, that the share of the soveriegn varied from one-half to one-eighth of the gross produce, from a study of the principle of the Mogul finance. Now we would ask the reader to turn to the statistics of rents given by us under the head of "Rents in Olden Times," and to say, whether his conclusion is not the one in accordance with facts. The different proportions of the produce which are represented by the present rents in the different districts of Bengal, clearly prove that the standards varied from one-half to one-eighth as has been stated by Mr. Justice Trevor and Mr. Harington (see page 7, *ante*).

We have already given (*vide* p. 52, ante) some information regarding the price of rice at the time of the Permanent-Settlement, from which it could be seen that, as a rule, the price has since *doubled.* We have found a corroboration of our views on this point in Mr. Finucane's Rent Report for Jessore given at page 122 of "Selections from the Records of the Board of Revenue." Mr. Finucane has found from the old correspondence registers of Jessore, that ordinary rice sold in the years 1790, 1791 and 1792, for 50, 50 and 20 seers, respectively, per rupee giving an average of 40 seers. But as there was in 1792, a famine in Jessore, the average price of rice about the

time of the Permanent Settlement may be taken at 45 seers the rupee. Now the price of ordinary rice in 1880, 1881 and 1882, appears from the price-list published in the *Calcutta Gazette*, to have been 15, 25½ and 28 seers respectively per rupee, which gives an average of 23 seers. We thus get the additional proof that the price of rice has only *doubled* since the Permanent Settlement.

In order to compare the present with the past, and to determine what ratio rent bore to gross produce at the time of the Permanent Settlement, we require to know: (1), the present yield per bigha; (2), the present selling price of rice which was the staple produce a hundred years ago as it is at present for most parts of the country; (3), the present rents; (4), the former yield; (5), the former selling price; and (6), the former rents. We can have very accurate information regarding (1), (2) and (3) from actual experiment and enquiry. As regards (4), though it is an admitted fact that the productive powers of all old lands have declined, we shall for the purposes of comparison, accept the present yield to represent the yield a hundred years ago. (5). We have shown that the information already at our disposal is sufficiently varied and accurate for arriving at the conclusion, that the former selling price of rice was half of what it is at present. We have also laid before our readers the rents that prevailed in ancient times in some of the districts. We all know that rents have risen throughout Bengal since the Permanent Settlement. In districts, such as Hughli, the rents have *quadrupled*, while in others they have generally *doubled*. In all these cases where we have information about the changes which have taken place in rents, we can accurately determine the ratio that rent bore to value of gross produce in ancient times. But in cases where information regarding such changes is not available, we

are prepared to accept the *present rents* as representing the rents prevailing at the Permanent Settlement. Even then it will be found that, *generally speaking*, the ratio of the old rent to the value of gross produce was less than one-fourth. We do not mean to say that there will not be found districts, such as Bankura and Birbhum, where the ratio was higher, but that only proves Mr. Justice Trevor's finding, that, at the settlement of Todar Mal, the sovereign's share of the produce varied from *one-eighth to one-half*.

We have hitherto tried to prove that it is not correct that the share taken by the Mogul Government was one-fourth. The statement of the zemindars that the rate of rents varied at the time of the Permanent Settlement, from "*three-fourths* to *one third*," or from "*half* to *three-fifths*" is altogether without any foundation. It is true the zemindars have used the phrases "it is on record," and "it is well known," by way of evidence. It may be "on the record" of the zemindars, or it may be "well known" to them, but it is nowhere to be found in the record to which the public have access, and is not at all known to them. The authority of Sir John Shore, quoted by their advocate, is not of any value, as Sir John Shore had no means of obtaining any correct information on the subject, and all that he has stated about the ratio of rent to produce is unsupported by evidence. No actual measurement and assessment preceded the Permanent Settlement. The only means for arriving at a correct idea on the subject is what has been adopted by us. And we would ask the reader to judge how far our attempt has been successful

The zemindars are dissatisfied with the proposal to give them one-fifth share of the value of the gross produce. Though it is not intended to reduce the rents

they at present receive, it will curtail their powers of enhancement in certain districts where the present rates are very high. They would, therefore, leave the law as it at present stands. This is, no doubt, very considerate on their part, and the ryots will thank them for giving up the clamour for a change in the law of enhancement?

The principle of proportion laid down by the High Court in Thakooranee Dassee's case is a sound one, and *if carefully and intelligently* worked, can never do harm to the ryots. The error which has hitherto marked the proceedings of the law courts in the decision of enhancement cases is that of not taking into account the "feed and keep" of the ryot, while calculating the expenses of cultivation. A ryot now has to spend more for his subsistence than he had to spend a hundred years ago, and as all pasture lands are being brought under cultivation, the "feed" of his cattle also costs him more than before. If all these circumstances, together with the circumstance that the productive powers of lands have in most parts of the country greatly declined, be taken into consideration, the zemindars *would not be entitled to even double the rent* that prevailed at the Permanent Settlement. But if an enquiry be made, it will be found that even in the Eastern districts, in which Government proposes to afford facilities to the zemindars towards enhancement, the rents have in most instances more than doubled. The zemindars have alleged, and their allegation has been accepted by Government as correct that "enhancement through the judicial machinery has practically come to a dead-lock." But the facts adduced by us will prove that enhancements have been universal since the passing of Act X., and we only regret that Government has been taken in by the zemindars' misrepresentation.

It is the impression, in some high quarters, that the ryots of Eastern Bengal are, as a body, in a prosperous condition. But there could not be a more incorrect and unfair statement than this. That there are some well-to-do ryots in each village we do not mean to deny. What we object to is, the assertion that the generality of the ryots of Eastern Bengal are in a prosperous condition. *The rates of rents payable by the ryots of a village should not be regulated, so that a few only could bear them with ease, but the object should be to adjust rents to the condition of the ryots generally in a village, or in any other tract of land similarly circumstanced.* In 1876 we made certain inquiries regarding the size of ryots' holdings, and we beg to reproduce here what we wrote on the subject in a pamphlet published in that year.

"Though it is to some extent true, that the ryot's condition has generally improved, this improvement has not been so great as it is supposed to be by outsiders. With the import of European articles, more glittering than lasting, a ryot's luxuries have increased, but not so his actual wealth. Men who see him in the law courts, and the streets, cannot form a correct idea of what he is at home. With the exception of a few—say, ten in a hundred—the royts live from hand to mouth, and not a few of them are involved in debts, from which they find it hard to get out in their life time. This is not generally owing to their idleness or improvidence. A royt's *circumstances do not depend so much on the comparative fertility or otherwise of the lands* contained in his holding, as on the *extent* of that holding.

"'In the 24-Pergunnahs Soonderbunds, west of the Jaboona and Khalindee (where the proportion of rent to gross produce is $\frac{1}{6}$), a holding of anything *above* 150 biggahs would be considered very large, and *below* 15

biggahs, *very small.* In the same district, east of the abovenamed rivers, and in Jessore Soonderbunds (proportion $\frac{1}{7}$), with which the lands east of the Jaboona and Khalindee assimilate, 200 biggahs and upwards would be considered a very large holding, *below* twenty biggahs, a *very small* one. In the 24-Pergunnahs on the west of the Jaboona and Khalindee, and in Backergunge (proportion $\frac{1}{6}$), twenty-five biggahs of land would he considered a *fair sized, comfortable holding* for a *ryot* with a *family;* but in Jessore, and in the eastern part of the 24-Pergunnahs Soonderbunds, a holding less than thirty-five biggahs would *hardly suffice to maintain a ryot and his family in comfort.*'—(Statistical Reporter, p. 5, June 1876.)

"In the district of Jessore, where in the north the average area of a ryot's holding is ten biggahs, and in the south, twenty-two biggahs, 'the northern ryot is evidently *not so well-off* as the occupant of the recently reclaimed tracts in the south, and *has to live more from hand to mouth.*'—(Statistical Reporter, p. 42). Though the latter pays a higher rent ($\frac{1}{7}$) than the former ($\frac{1}{15}$).

"Government has published certain statistics regarding Ryotee holdings, compiled from the Road Cess returns. The statistics of the Dacca, Furreedpore and Tipperah districts have been available to the present writer, and he has gathered therefrom the extent of the different classes of Ryotee holdings in these districts. In each district the holdings are classified in the following manner :—

(I.) Those which pay annually rents above Rs. 100.

(II.) Those which pay annually rents above Rs. 50, but not more than Rs. 100.

(III.) Those which pay annually rents above Rs. 20 but not more than Rs. 50.

(IV.) Those which pay annually rents above Rs. 5, but not more than Rs. 20.

(V.) Those which pay annually rents not above Rs. 5.

The number of Ryotee holdings in the Dacca district is 3,29,131, which is divided among these five classes in the following manner :—

Class ...	... Number	.. Annual Rental. Rs.
Class I ...	... 155	... 43,007
„ II ...	... 339	... 22,700
„ III ...	... 7,596	... 2,14,154
„ IV ...	... 75,187	... 6,99,364
„ V ...	... 2,45,853	... 4,33,835

" From this the following proportions are obtained :—In every 1,000 holdings, there are none of the 1st class, 1 of the 2nd class, 23 of the 3rd class, 228 of the 4th class, and 748 of the 5th class.

The average rental paid for a holding of each class is as follows :—

1st class	Rs. 276
2nd do. ...	 67
3rd do. ...	 28
4th do. ...	 9
5th do. ...	... ... Re. 1-12

Leaving out the 1st and 2nd classes, which do not represent the actual cultivators called ryots, but middle-class men, called *Jotedars*, we have 23 Ryotee holdings out of a 1,000, in which the annual rental is on an average Rs. 28, 228 Ryotee holdings in which the average annual rental is Rs. 9-4, and 747 Ryotee holdings in which the average annual rental is only Re. 1-12. At the rate of 12 as. a Biggah, the extent of holding of the above three classes would be 37 Biggahs, 12½ Biggahs, and

2½ Biggahs, respectively. The 3rd class holdings are not considerable, and, roughly speaking, ¼ of the ryots hold on an average 12⅓ Biggahs, and ¾ only 2⅓ Biggahs each. It is true that the 5th class contains many holdings which are not *purely agricultural*, such as those of fishermen and artisans, &c., but, making all *possible deductions*, and taking the non-agricultural holdings to be equal to agricultural ones, the average holding of an agricultural ryot of the 5th class in the Dacca district would not be more than double the above area, or, say, 5 Biggahs. This would not be considered a large holding; it is, in fact, as low as one could possibly be.

"The Tipperah statistics supply the following information:—

Name of class.	No. of holdings.	Total rental.
I ...	... 143 ...	... 21,281
II ...	... 2,147 ...	... 1,35,866
III ...	... 28,308 ...	... 8,22,157
IV ...	... 1,48,675 ...	... 14,66,942
V ...	... 3,67,689 ...	... 5,64,439
	Total 5,46,962	30,10,684

"From the above, we find that, out of 1,000 holdings, there are none of class I., 4 of class II., 51 of class III., 271 of class IV. and 672 of class V. For reasons already given, we leave out of consideration classes I. and II. The average annual rental of a holding in class III. is Rs. 28, in class IV. Rs. 9-13, and in class V. Re. 1-8. The rate of rent in this district, as given in the Collector's Return XLI. B. for 1873-74, is Rs. 3 per acre, or Re. 1 per Biggah. The average extent of a ryot's holding in these three classes will, accordingly, be 28 Biggahs, 9½ Biggahs, and 1½ Biggahs. But, as has been said in the case of the Dacca district, there are many holdings in class V. the owners of which are not actual cultivators.

Taking these to be about half the total number, the average holding of an actual cultivator of the lowest class would be double the above, or 3 Biggahs. It will thus appear that about $\frac{1}{4}$ of the agricultural ryots in the Tipperah district hold about $9\frac{1}{2}$ Biggahs, and the remaining $\frac{3}{4}$ about 3 Biggahs of land each.

"The statistics of the Furreedpoore district show that there are in that district 36 holdings, with an annual rental Rs. 7,468 of the 1st class; 208, with an annual rental Rs. 13,230 of the 2nd class; 3,007, with an annual rental Rs. 81,522 of the 3rd class; 36,913, with an annual rental Rs. 3,30,149, of the 4th class, and 1,24,708, with an annual rental Rs. 2,06,344 of the 5th class. This gives the following proportions per 1,000 :—

1st class	...	...	...	None.
2nd do.	...	...	...	1
3rd do.	...	...	...	18
4th do.	...	...	...	223
5th do.	...	...	...	758

"Leaving out of consideration, as before, the 1st two classes, we have the annual rental of a holding of the 3rd class Rs. 27, of one of the 4th class Rs. 8-15, and of the 5th class Re. 1-10.

"The Collector's Return XLI. B. for 1872-73 for this district gives the average rent per acre at Re. 1-12, or, say, 10 as. per Biggah. Calculating accordingly, we find that an average holding of the 3rd class contains $43\frac{1}{3}$ Biggahs, of the 4th class $14\frac{2}{10}$ Biggahs, and of the 5th class $2\frac{1}{2}$ Biggahs. Taking, as before, half the holdings of the 5th class to be non-agricultural, the extent of each agricultural holding of this class would be double of $2\frac{1}{2}$ Biggahs, or 5 Biggahs.

"The following is a comparative statement of the average

extent of a holding of each of these three classes in the three districts named before:—

Name of District.	3rd class holding in Biggahs.	4th class holding in Biggahs.	5th class holding in Biggahs.
Dacca	... 37	... $12\frac{1}{3}$	... 5
Tipperah	... 28	... $9\frac{1}{2}$	... 3
Furreedpore	... $43\frac{1}{3}$	... $14\frac{3}{10}$	... 5

"The first of the above columns gives an average large-sized Ryotee holding, the second an average middle-sized holding, and the third an average small-sized holding. It has been already shown that the large-sized holdings are very few, and, as the middle-sized ones form about a fourth of the entire holdings, we shall limit our consideration to the last class of small-sized holdings, forming $\frac{3}{4}$ of the entire number.

"A ryot holding 5 biggahs of land would not, the present writer believes, be considered a well-to-do man. Of his 5 biggahs, 1 biggah would often be occupied by his house and trees, and he would have only 4 biggahs to cultivate. From the general statement, I. A. annexed to the Census Report for 1872, it will appear that the number of persons per house in the Dacca district is 6·4, in Furreedpore 6·6, and in Tipperah 5. It is not to be supposed that, because a ryot is a poor man, therefore, he has fewer persons in his family than a well-to-do person. On the contrary, a ryot is often *burdened* with more children than a zemindar. Taking, therefore, the average to be 6 per house, we have the produce of 4 biggahs of land, the money value of which is Rs. 61-8, as shown elsewhere, wherewith he has not only to feed and clothe himself and family, but also to pay rents. His condition would not, the writer believes, be said to be prosperous. It has been seen that, in the northern part of the Jessore district, a ryot with a holding of 10 biggahs

has to live more from hand to mouth than a ryot in the southern part, who has a larger holding. The difference in condition here is not owing to a difference in the productive powers of the lands, but to the comparative smallness, or largeness, of the holdings. The generality of the Dacca, Furreedpore,and Tipperah ryots are, therefore, from the smallness of their holdings, in much worse circumstances than the Jessore, Backergunge, and Soonderbund ryots, though the latter pay a higher rent than the former."—*(The Rent Question, pp.* 12-18).

In no country in *the world*, excepting Belgium, is the pressure of population so great as in India, and in no part of India greater than in Bengal and Behar. The following table shows the density of population per square mile, and the number of persons per house in the different districts of Bengal, Behar, Orissa, Chota Nagpore and Assam. The information has been gathered from the Census Report for 1872.

Extract from "General Statement I. A." appended to the Census Report, 1872.

District.	Persons per squire mile.	Persons per house.
BENGAL.		
Burdwan ...	578	4·7
Bancoorah ...	391	5·0
Beerbhoom ...	518	4·3
Midnapore ...	500	5·7
Hooghly with Howrah ...	1,045	4·6
24-Pergunnahs ...	793	5·6
Nuddea ...	530	5·2
Jessore ...	567	6·6
Moorshedabad ...	525	4·5
Dinagepore ...	364	5·7
Maldah ...	373	5·2
Rajshahye ...	587	5·3

Extract from "General Statement I. A., &c.—(Contd.)

District.	Persons per square mile.	Persons per house.
BENGAL.		
Rungpore ...	619	6·5
Bogra ...	459	5·5
Pubna ...	616	6·1
Darjeeling ...	77	5·0
Julpigoree ...	144	6·0
Cooch Behar ...	407	6·5
Dacca ...	640	6·4
Furreedpore ...	677	6·4
Backergunge ...	482	7·4
Mymensing ...	373	7·6
Sylhet ...	319	6·0
Cachar ...	160	5·5
Chittagong ...	451	5·7
Noakhally ...	459	5·0
Tipperah ...	578	5·0
Chittagong Hill Tracts ...	10	5·2
Hill Tipperah ...	9	5·6
BEHAR.		
Patna ...	742	5·8
Gya ...	413	5·9
Shahabad ...	393	6·3
Tirhoot ...	691	6·8
Sarun ...	778	7·0
Chumparun ...	408	5·9
Monghyr ...	463	5·5
Bhaugulpore ...	422	5·5
Purneah ...	346	5·5
Sonthal Pergunnahs ...	229	5·4
ORISSA.		
Cuttack ...	470	5·3
Pooree ...	311	5·3
Balasore ...	373	5·5
Tributary Mehal ...	79	5·1
CHOTA NAGPORE.		
Hazareebagh ...	110	5·1
Lohardurgga ...	103	5·1

Extract from "General Statement I. A., &c.—(Contd.)

District.	Persons per square mile.	Persons per house.
Singbhoom ...	92	4·9
Maunbhoom ...	203	5·1
Tributary Mehals ...	26	5·0
ASSAM.		
Goalpara ...	100	6·1
Kamroop ...	155	5·4
Durrung ...	69	5·4
Nowgong ...	70	5·8
Sheebsagor ..	123	5·3
Luckimpore ...	39	4·6
Total for Bengal ...	430	5·7
„ „ Behar ...	540*	6·1
„ „ Orissa ...	180	5·2
„ „ Chota Nagpore	87	5·1
„ „ Assam ...	63	5·4

* Purnea and the Sonthal Pergunnahs, which are Bengal districts, are excluded from this calculation.

Commenting on the figures given in the above table, Sir George Campbell remarked as follows :—

"If we eliminate the exceptional tracts, we shall find that the districts, and parts of districts in the plains, which are without special drawback, cannot average less than about 650 souls per square mile; say, one person per acre of gross area. In the best districts we can hardly allow less than 25 per cent. for rivers and marshes, roads and village sites, and other areas for any reason unculturable or uncultivated, say, we have 75 per cent. of cultivation, or three-fourths of an acre per head, we may allow one-third of that for products other than the food of the population,—oil-seeds and fibres, indigo and opium and commercial exports of all kinds, including a large export of rice, as well as the dress and luxuries of the people of the country. The result will be that we can hardly have more than half an acre per head

devoted to raising the food of the population."—(Bengal Administration Report for 1871-72, p. 35.)

That our readers may be able to compare the density of population per square mile in Bengal and Behar with the density of any of the principal States of Europe, Asia and America, we give below the following figures, which we have compiled from "The Statesman's Year Book for" 1880:—

Density of population of the principal States of Europe (Statesman's Year Book, 1880, page XXIX.)

States.	Population per square mile.
Belgium	469
Great Britain and Ireland	265
England and Wales	389
Scotland	109
Ireland	169
Italy	238
Germany	201
Prussia	187
Bavaria	170
Würtemberg	245
Saxony	407
Netherlands	185
France	180
Switzerland	175
Austria-Hungary	149
Austria	175
Hungary	124
Denmark	129
Roumania	109
Portugal...	108
Spain	90
Servia	82
Greece	73
Turkey in Europe	68
Russia in Europe	34
Sweden and Norway	22
Sweden	28
Norway	14

Density of population of the principal States of America and Asia.

States.	Density per square mile.	Page of Statesman's Year Book, 1880.
Canada	1	516
United States	10	592
Ceylon	97	658
China	266	664
Japan	204	706
Persia	7	721
Siam	47	726
Australia	1	730

It will be seen from the above tables that in only ; (1) Belgium ; (2) England ; and (3) Saxony, the population per square mile exceeds 300. But in Belgium only *one-fourth* of the population is engaged in agricultural pursuits (Statesman's Year Book for 1880, p. 36.) As England is a manufacturing country, and agriculture is conducted there by large capitalist farmers, there can be no comparison between her and India. "Saxony," says Dr. Field, "is eminently an industrial country, more than 56 per cent. of the *whole* population and nearly 53 per cent. of the *working* population being engaged in industrial pursuits. A little over *one-fourth* of the entire population are employed in agriculture."—(*Landholding*, &c., p. 75.)

The present question of the settlement of rent in Bengal and Behar cannot, therefore, be solved with the light of information derived from any of the other countries of the world.

Speaking of the Bhaoli-tenures of Behar, the zemindars have compared them with the Metayer-tenures prevailing in other countries. The evils of the Bhaoli system have been described under the "The necessity for a general revision of the rent law," and we need not repeat them here. We wish only to state that whatever may have been the advantages of this system of tenures in ancient times, there can be no question that it is at present a positive evil of very great magnitude. The average size of holdings has greatly diminished, and the pressure of population in Behar is greater than in any other part of the world. The following extract from a report, dated 6th June 1876, by Mr. Finucane, gives some idea of the smallness of Ryoti-holdings in Behar :—

"An examination of the statements annexed will show that of 317 ryots in village Naraya (Pergunnah Alapore, District Durbhanga) there are :—

1. 32 who hold 10 Beeghas or more.
2. 56 „ „ 10 to 5 Beeghas.
3. 93 „ „ 5 to $2\frac{1}{2}$ „
4. 44 „ „ $2\frac{1}{2}$ to $1\frac{1}{2}$ „
5. 92 „ „ less than $1\frac{1}{2}$ " „

According to Mr. Finucane, village Naraya may be taken as a specimen of the northern part of Behar.—(*Selections from Board's Records*, p. 117).

Comparing the Metayer-tenure of Italy with that of France, Professor Fawcett, in the extract given below, attributes the success of the Italian system chiefly to the size of the holdings which are never less than 10 acres (30 Beeghas). But while the density of France is only 180, that of Behar is 540 per square mile.

"The Metayer-tenure of Italy strikingly contrasts with that of France, both in its results and the nature of the

contract. Almost the entire land of Lombardy and Piedmont is cultivated by Metayers. The excellence of the agriculture in these countries is proverbial ; in fact it is not surpassed in any country in the world. This excellence is not due to any peculiar natural advantages. The soil of Piedmont is scarcely of average fertility, and Lombardy was for years exposed to intolerable oppression by its Austrian rulers. * * * * * In Lombardy and Piedmont the land is not *so much sub-divided as in France ;* a Metayer farm seldom exceeds sixty, *but is never less than ten acres.*" * * * *—(*Fawcett's Political Economy,* p. 210.)

One of the objections of the zemindars quoted above remains to be noticed.—It has been urged by them that there should be no restriction to freedom of contract on the part of the ryot. We cannot do better than quote by way of reply the remarks of the Government of India on the subject of avoidance of contract :—

" 85. Nor need we dwell on section 20 of the Bill, which provides that no contract, whether entered into before or after the commencement of the enactment, shall in any case debar a ryot from acquiring a right of occupancy in *ryotti* lands used for agricultual purposes. Such is the power of the zemindars ; so numerous and effective are the means possessed by most of them for inducing the ryots to accept agreements which, if history, custom, and expediency, be regarded are wrongful and contrary to good policy ; that to uphold contracts, in contravention of the main purpose of the Bill would be, in our belief, to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed ; and in this conclusion we have the support not only of the Bengal Government, but also of the almost unanimons opinions of the Bengal Officers."—(*Correspondence,* &c., p. 33.)

We need hardly state that we subscribe to every word of the above statement of the Government of India. We know of numberless instances in which the zemindars managed to take Kabulyats from the ryots the effect of which was the destruction of their occupancy rights. Ignorant as the ryots at present are, the law should protect them against such cunning devices resorted to by the zemindars.

VII.—RECOVERY OF RENTS FROM RYOTS.

For the recovery of rents from ryots, the Bill in Chapter XIII, provides for distraint and sale of crops through court. In Chapter XIV, it proposes to simplify the procedure in suits for recovery of rents by laying down: (1) that the summons shall in every such suit be for the final disposal of the suit (section 193); (2) that a written statement (by the defendant) shall not be filed in any such suit without the leave of the court (section 195); (3) that the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure, whereby only a memorandum of the deposition is to be recorded, shall apply to all such suits (section 196); (4) that a court may, when passing the decree, order on the oral application of the decree-holder the execution thereof (section 197); and (5) that no appeal shall lie from any decree or order passed in any such suit, *(a)* by the District Judge, Additional Judge, or Subordinate Judge, when the amount claimed does not exceed one hundred rupees, or *(b)* by any other Judicial Officer (Moonsiff), especially empowered, when the amount claimed does not exceed fifty rupees (section 198).

The objections of the zemindars, as stated in their

petition to Parliament, to the provisions of the Bill for the recovery of rents from ryots, will be found in the following :—

"IX. As regards recovery of rent, the landlord had formerly to call in the tenant to pay in his rent, failing which he could have him arrested by a simple application to the court followed by a summary enquiry. He could attach the property of the tenant and sell it after due notice. All suits for arrears of rent were heard before all others by the civil courts, and were finally transferred to the Collector for expedition. Act X. of 1859 took away from the landlord the power of calling in his tenant. At first the arrear suit was triable by a revenue officer under summary procedure, but now it has been made a regular civil suit, to be tried at a heavy cost under the regular Civil Procedure. The result is, that ordinarily a rent suit is not disposed of within three months, and not unoften many months, and that if the tenants continue to withhold rent, the landlord must either succumb or let his estate be sold for default. It is observable that this procedure is not applicable to the State in the recovery of its dues as landlord or as guardian of minor landlords. If the State with its vast resources, unequalled influence, and immense prestige, without the terrors of a sunset law for sale of estate in case of default of revenue, deems it necessary to have recourse to a summary law for the realization of rent, how much more necessary is it for the private landlord for a like purpose ? Although three successive Lieutenant-Governors of Bengal, as stated above, had promised the landlords the simplification of the procedure for the recovery of rent, still no advance has been made in this Bill in that direction.

"X. On the contrary, the Bill practically minimises the only facility which the present law provides for the speedy realization of rent, *viz.*, distraint. The process of distraint is now made at every step, a process of court, and by the time the court's order may be obtained the crops may be removed or disposed of, and the landlord's demand thus defeated. As the Bill has been framed, the landlord will, on the one hand, be made to forfeit his ancient, substantial, and valuable rights, but will, on the other, derive no benefit from it."

The essence of the arguments contained in the above extracts will be found to consist in the delay and expense attending the recovery of rent through court. But if the zemindars had carefully studied the subject, they would have seen that the fault does not lie in the law as it at present stands or as is proposed in the Bill, but in the execution of it. A comparison between the law proposed for the zemindars and the certificate procedure allowed to Government under Act VII. (B. C.) of 1880, will show that whatever difference there is between the two, it is in favour of the Zemindar. While a summons to the defendant in a civil suit may require him to appear and answer within a "sufficient time" (Section 69 of Act XIV of 1882) which may be less than a month,—it may be a week or fifteen days,—the notice of certificate issued by a Collector, section 12 of Act VII. (B. C.) of 1880, must not allow the defendant less than one month's time to object. Again, should the defendant object to the demand, the Collector must hear his petition in the same manner in which a civil suit is decided. But while no appeal under the proposed law will, in the majority of cases, lie against the order of the civil court, there is allowed an appeal against the order of the Collector or

his Deputy or Assistant Collector in every case, under Act VII. (B.C.) of 1880.

It is not, therefore, owing to any defect in the law that the zemindars cannot realize their rents as speedily as Government can realize its demands. The defect lies not with the legislative but the executive capacity of Government. And here we regret we cannot defend Government. No law, however perfect it may be, will have the desired result without a sufficient working machinery, and it is our humble opinion that the number of Moonsiffs, though increased greatly of late, is still insufficient for the heavy work that those officers have to perform. As a necessary consequence of this, parties are put to much unnecessary expenses and delay in attending courts from day to day. It not unfrequently happens that while parties with their witnesses appear on the first day of hearing when the case could be finally disposed of, the Moonsiff cannot attend to them, and the consequence is that the case is adjourned often more than once. All these adjournments are harassing and expensive to the parties and their witnesses, and only a small portion of the actual costs incurred by the parties appear in the decree. This is, indeed, a great defect in the administration of justice, and will continue to exist so long as the number of Moonsiffs and their ministerial establishment will not be adequately increased.

The High Court has, it will be seen from the following extract, admitted the necessity for increasing the ministerial establishments of Moonsiffs :—

"In the opinion of the High Court, the question of strengthening the ministerial establishments of subordinate civil courts is one which will shortly have again to be faced. Not only are these establishments weighed down with an amount of work which experience has

shewn that it is not fair to exact from them, but the more speedy decision of rent suits and of petty suits of the Small Cause Court class, owing to the successful working of the scheme for their disposal by a special officer, has increased the work in the execution department to an extent which has carried it beyond the powers of the present staff."—(*Report of the Administration of Civil Justice for* 1882, p. 6.)

Like all other proposals for reform involving increased expenditure this one for "strengthening the ministerial establishments of Subordinate Civil Courts" has been laid by for some convenient time, while suitors continue to suffer from the harassing delay and expenses that at present attend the decision of Civil Courts and the execution of their orders.

The following statements from the Civil Administration Report above alluded to will show what profits Government makes out of the Civil Courts:—

"*Statement giving separately and in detail the Receipts and Charges of the Civil Courts in the interior in the past year:—*

Receipts.		Rs.	Charges.		Rs.
In Stamp ...	Process-fees ...	18,22,943	Salaries of Judicial Officers		16,71,711
	Other fees ...	43,49,048	Establishment.	Process-Servers ...	6,34,035
				Salaried Copying and Comparing Clerks ...	21,047
				Others	7,65,334
In cash or special stamps ...	Fines ...	10,992	Contingencies.	Fees paid to Copyists not on the fixed establishment	1,66,739
	Copying and Comparing fees ...	3,33,584			
	Other receipts ...	96,366		Other contingencies and refunds	1,37,200
	Total ...	66,12,933		Total ...	33,96,066

"Deducting the cost of Process-Servers and of Copying Clerks (inclusive of the Copyists not on the fixed establishment), the net receipts from Stamps amounted to Rs. 56,83,754. Under the head of Process-fees separately, the net gain to Government in the past year was Rs. 11,88,908 as compared with Rs. 10,38,891 gained in the previous year."—(*Report of the Administration of Civil Justice, Bengal*, 1882, p. 44).

"*Statement shewing the Receipts and Charges of the several grades of Courts in the past year, and the surplus or deficit which has resulted:—*

	Receipts.	Charges.	Results, plus or minus.
COURTS IN THE INTERIOR.	Rs.	Rs.	Rs.
Small Cause Courts	4,64,102	2,25,921	+ 2,38,181
Munsifs' Courts.....	42,62,322	15,94,128	+26,68,194
Subordinate Judges' Courts	9,79,926	4,63,405	+ 5,16,521
District and Additional Judges' Courts	9,66,583	11,12,612	− 2,06,029
COURTS AT PRESIDENCY.			
Small Cause Courts	2,77,110	2,10,410	+ 66,700
High Courts (Original and Appellate)	6,85,230	9,98,303	− 3,13,073

—(*Report of the Administration of Civil Justice*, 1882, p. 45.)

The figures contained in the above statements speak volumes. Under the head of "Process-fees" the net gain to Government in 1882 was Rs. 11,88,908. The total receipts in the Moonsiffs' courts amounted to Rs. 42,62,322, while the charges for those courts amounted to only Rs. 15,94,128 thereby leaving a net gain of Rs. 26,68,194 to Government. As the net gains from the Small Cause courts and Subordinate Judges' courts more than cover the losses suffered on account of the District Judges' courts and the High Court, Government might without having to spend a single rupee from any of the other sources of revenue, spend the whole of the amount it gains from the Moonsiffs' courts for improving those courts. But as the sum at present spent is only Rs. 16 lacs, Government might double the present establishment of Moonsiffs and their ministerial establishment, and still enjoy a net profit of upwards of Rs. 10 lacs from the Moonsiffs' courts alone. The policy which makes a profit by selling justice dear to the people is, in our humble opinion, of a very questionable nature. And we would advise the zemindars to direct their attention to the question of increasing the number of Moonsiffs, courts and of improving their efficiency by adding to the present strength of their ministerial establishments. This is a point which has not received from the zemindars and the public the attention it deserves.

We shall conclude this part of the discussion with an extract from a pamphlet published in 1879, by Baboo Keshab Chandra Acharja Chowdhury, Zemindar and Pleader of Mymensing, who, it will be seen, disapproves a summary mode of procedure for the realization of rents. "As to the summary procedure," says this Zemindar-Pleader, "I don't think it is needed, as from my own

experience I know that very few ryots withhold the payment of rent when there is no dispute as to the rate and amount of it."—(*Rent Question in Bengal*, p. 28. By Baboo Keshab Chandra Acharja Chowdhury.)

Conclusion.

We have discussed in the above all the important grounds of objection mentioned in the Zemindars' petition and only three unimportant grounds, namely, VII, VIII and XI remain to be noticed. These are stated below :—

"VII. The importation of foreign ideas in the regulation of the ordinary relations of life in an, Oriental country, for which the people are not ripe can only lead to harm. Never in the history of this country, or at present within the British territories, or in the Native States, is the practice of paying compensation to a tenant-at-will for relinquishment of his holding known or recognized. As a rule, the class of tenants called tenants-at-will have not the means of making improvements, and therefore there has never been any question of compensation for disturbance raised. This innovation will not only be a serious interference with the proprietary rights of the landlord, but will plunge both landlord and tenant into deep litigation.

"VIII. This Bill will foster litigation between the landlord and tenant at every step of their transactions. The landlord's office will be transferred to the revenue office, and the landlord himself will be reduced to a mere annuitant. Whether the question be classification of land, determination of occupancy right, transferability of a tenancy, the exercise of the right of pre-emption on the part of the landlord, the settlement of rent, the payment of compensation to a tenant-at-will for disturbance, or the realization of rent, there will be at

every step expensive, harassing, and, not unfrequently, demoralizing litigation. There will be no peace, no concord, no harmony, no good-will between two such important members of the community as the landlord and tenant. Such embittered relations between them, as will be the inevitable result of the proposed Bill, cannot be conducive to the true well-being of the State or society."

"XI. Nor will the *bonâ fide* cultivator derive material benefit from the Bill. If he holds land under a superior landlord, his rent will be 20 per cent. of the gross produce of the land, but under a subordinate holder it will be 30 per cent. of the same, or 50 per cent. more than what he will pay to the former. He will acquire occupancy right under a superior landlord, but none under a subordinate holder, the latter being himself a tenant with occupancy right. So that without fixity of tenure, freedom of sale, or security of fair rent, the actual cultivator of the soil under the operation of this Bill will be reduced to the miserable lot of a poor day-labourer."

As regards "Objection VII.," we agree with His Honor the Lieutenant-Governor in thinking, that "it is desirable to give security for the invested capital of the tenant, no matter what that tenant's *status* may be"; and we also think that compensation, both for improvements and for disturbance to the non-occupancy ryot, is "in accordance with good policy and natural justice."

Objection VIII. hardly deserves any notice. The object of the several provisions of the Bill, complained against by the zemindars, is not to increase but to reduce litigation, and though we think that the Bill, in its present shape requires some modification, we believe that the general effect of it will be to "conduce to the true well-being of the state of society."

The remarks already made by us on "sub-letting" apply to the points urged by the zemindars under "Head XI."

The chief features of the Bill having been discussed, we shall, for the present, take leave of the "Rent question in Bengal." We have, in conducting the discussion, tried to deal fairly with all parties. Personally speaking, we are greatly indebted to the Permanent Settlement of 1793. And if our sympathies are more with the ryots than with the zemindars, it is not because we belong to the class of ryots or talookdars.


सत्यमेव जयते